TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible]/72

ELIZA WALKER, APPELLANT,

vs.

JOSEPH S. BEAL AND ALEXANDER S. WHEELER, EXECUTORS OF WILLIAM J. WALKER, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED [illegible] 17, 1872.

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1 UNITED STATES OF AMERICA,
Massachusetts District, ss :

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-eight:

Before the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge; in equity.

ELIZA WALKER, complainant,
vs.
JOSEPH S. BEAL *et al.*, defendants.

2 The bill of complaint in this cause was filed in the clerk's office, on the fourth day of April, A. D. 1866, and was duly entered at the October term of this court, A. D. 1865, and is in the words and figures following, namely:

3 *Bill of complaint.*

To the honorable the justices of the circuit court of the United States to be holden at Boston, within and for the district of Massachusetts:

Eliza Walker, of the city of New York, a citizen of the State of New York, brings this her bill against Joseph S. Beal, of Kingston, in the State of Massachusetts, a citizen of said State of Massachusetts, and Alexander S. Wheeler, of Boston, in said State of Massachusetts, a citizen of said State of Massachusetts, as they are duly constituted executors, in said State of Massachusetts, of the last will and testament of William J. Walker, late of Newport, in the State of Rhode Island, physician, deceased.

And thereupon your oratrix complains and says as follows:

First. That in the month of September, in the year of our Lord one thousand eight hundred and forty-five, she was the lawful wife of the said William J. Walker, and that they both then were, and for many years previous had been, inhabitants of the city of Charlestown, in said State of Massachusetts. That at that time, and for many months previous thereto, the said William J. Walker had been guilty of such extreme cruelty towards your oratrix that ultimately, on or about the fifteenth day of said September, she was compelled to leave his house and no longer cohabit with him.

That the said acts and conduct of the said Walker towards her were such that, by the laws of the commonwealth of Massachusetts, she was entitled, by reason thereof, to prosecute and maintain against him a suit for divorce from bed and board, and to be decreed in such suit a liberal and suitable allowance for alimony; the said Walker being then
4 and there a person of large estate, real and personal, amounting, as your oratrix is informed and believes, to a sum of at least five hundred thousand dollars.

Second. That your oratrix applied to counsel learned in the law to institute proceedings to procure such divorce and a decree for alimony in the proper tribunal in the said State of Massachusetts; and thereupon the said William J. Walker, in order to induce your oratrix to forbear such proceedings and to avoid the obtaining a decree against him for such alimony, did propose to execute an agreement with your oratrix, providing that your oratrix and the said William J. should live separate and apart from each other, and providing, also, among other things,

toward the support and maintenance of your oratrix by a conveyance of real and personal estate to trustees, the income of which should be devoted to that purpose. To which proposition, modified as hereinafter stated, your oratrix did consent, and did agree not to institute proceedings for a divorce and alimony, and thereupon, on the twenty-fourth day of February, A. D. eighteen hundred and forty-six, an indenture between the said William J. Walker, of the first part; Uriel Crocker, of said Boston; Thomas Marshall, of said Charlestown; John B. Walker, of said Boston; and your oratrix, of the second part, was duly made, executed, and delivered; a copy of which indenture, marked C, is hereto annexed, which your oratrix prays may be considered a part of this her bill.

Third. That in and by said indenture, and in pursuance thereof, said William J. Walker did cause to be conveyed to the said Uriel Crocker, Thomas Marshall, and John B. Walker, the survivors of them and their assigns, and to the survivor of them, his heirs, and executors, administrators and assigns, certain real estate, mortgages, notes, and property in said indenture described, in trust, nevertheless to pay the net rents, interest, and income thereof to your oratrix for her sole and separate use during her natural life, and from and after the decease of your oratrix to pay over, transfer, and convey said real estate, mortgages, notes, and property to the children of the said William J., and your oratrix, or their issue, in the manner therein set forth, and in default of such children or issue, to his heirs-at-law. Which conveyance and transfer were subject nevertheless to the condition, that if your oratrix should neglect or refuse to release, at the time and in the manner in said indenture set forth, to any purchaser or grantee from the said William J., her dower in any real estate then held by the said William J., (or that he might thereafter hold;) or if your oratrix should neglect or refuse to release, after the death of the said William J., at the time and in the manner in said indenture set forth, all her dower in his real estate, and her right and interest in her personal property and allowance therefrom, excepting the income provided to be paid her by said indenture, then the said grant and transfer of said real estate, mortgages, notes, and property was to cease and be void, and the whole property thus held in trust to be conveyed to said William J., if then living; otherwise to his heirs-at-law. And in and by said indenture, authority was given to said trustees to sell all or any part of said trust property, if they should deem the same expedient, and apply the proceeds to the payment of any debts contracted by your oratrix; provided that no such sale should be made in the lifetime of the said William J., without his request thereto in writing previously made. And said trustees and their successors were further authorized to invest said trust property and to indemnify themselves out of the income for the payment of any debts separately contracted by your oratrix, as well as for their own expenses, liabilities, and charges.

And in and by said indenture said William J. did, among other things, covenant with said trustees and their successors, to permit your oratrix at all times thereafter to live separate and apart from him. That he would not claim certain articles of jewelry or clothing then in the possession of your oratrix, or any property which might thereafter come to her by devise or descent. That your oratrix might demand and receive the interest of all real estate which she might acquire by devise or descent, and dispose of the same as well as of all personal property so thereafter acquired by her. And that the said William J. would execute any deed or deeds releasing all his interest in said real estate during the life of your oratrix; and that if he should survive your oratrix, he would

release to her heirs all title he might have in any such real estate as tenant by the curtesy.

Fourth. Said trustees, in and by said indenture, covenanted with the said William J. that your oratrix should at all times thereafter live
6 separate and apart from and have no intercourse whatever with him, unless he and your oratrix should elect to live together, and that they, the said trustees, would cause all debts that your oratrix might thereafter contract to be paid out of the income of said trust property, and that they would save harmless the said William J., his heirs, and representatives against the same, and of and from all payment of alimony or allowance for or in behalf of your oratrix thereafter. That your oratrix should from time to time release her dower as aforesaid in any and all real estate of the said William J. And your oratrix, by said indenture, promised that she would thereafter live separate and apart from the said William J., unless they should mutually agree to live together, and that she would keep and perform all the agreements in said indenture contained on her part to be kept and performed.

And in and by said indenture, it was further provided that if said William J. and your oratrix should at any time thereafter live together, said indenture should not thereby be rendered invalid, but the trusts therein contained should be executed subject to the conditions therein expressed, in the same manner as if the said William J. and your oratrix should live separately and apart from and after the date of said indenture.

Fifth. That your oratrix, pursuant to said indenture, did continue to live separate and apart from the said William J. until the month of April, in the year eighteen hundred and forty-six, at which time, she, at the request of the said William J., returned to live with him, to hold, as declared by him, the position of a guest in his family, and continued to live with the said William J. until the month of June, A. D. eighteen hundred and sixty, when she was compelled, by his cruel and harsh treatment of herself and her daughters, to cease to live with the said William J., and has ever since continued to live separate and apart from the said William J.

Sixth. That after the return of your oratrix to live with the said William J., and when the first instalment of income, payable by said trustees to your oratrix under said indenture, became payable to your oratrix, said trustees gave to your oratrix their check for the amount thereof upon one of the banks in said city of Boston, and thereupon the said William J. suggested to your oratrix that, as she did not need
7 the same, and was unskilled in the investment of money, your oratrix should deliver to said William J. said check, together with all checks or payments of money that should be delivered or made to her by said trustees as and for income of said trust property, while she and the said William J. should thus live together; and that he, the said William J. would, as her trustee, invest the same and the income thereof for her use, to be disposed of by her among her children or otherwise, in such manner as your oratrix might direct; to which proposal your oratrix assented, and delivered said check of said trustees to the said William J. in accordance and for the purpose thus proposed by him. And your oratrix thereafterwards, during the time that she thus continued to live with the said William J., did regularly deliver to said William J., at the time the same was received by her, each and every check or payment of income of said trust property made or delivered to her by said trustees, to be by said William J. invested with the income thereof for the use and in the manner thus proposed by

him, and assented to by her as aforesaid; a statement of which payments, and of the dates of the delivery thereof by your oratrix to the said William J., is hereto annexed, marked A; and your oratrix prays that the same may be taken as part of this her bill.

Seventh. That your oratrix did at no time receive or call upon the said William J. for the repayment to her of any part of said moneys thus placed in trust in the hands of the said William J., to be by him invested as aforesaid, except that at one time she did request the said William J. to give to their two sons, John Brooks Walker and Joseph Heard Walker, the sum of twelve hundred dollars each; and afterwards, on the twenty-seventh day of March, A. D., eighteen hundred and forty-seven, your oratrix did, at the request of the said William J., agree with him that from and out of the moneys so received by him from and held for your oratrix, the sum of fifteen hundred dollars should be retained by him in part payment of said sum of twenty-four hundred dollars so paid to their two sons as aforesaid, and the said William J. did then and there take and receive from your oratrix as a voucher authorizing the appropriation by him of said fifteen hundred dollars out of the moneys so held in trust for her, a paper signed by your oratrix, a copy of which is hereto annexed, marked B, which she prays may be taken
8 as part of this her bill. And your oratrix did further, at the time said last-named paper was by her executed, agree with the said William J. that the like sum of twelve hundred dollars should thereafter be given successively to their five other children, in such manner as might be agreed upon between your oratrix and the said William J.; which said agreement is set forth in said paper thus signed by her; but no agreement as to the said proposed gift to their said children was ever afterwards had or carried into effect, but the said income of your oratrix from said trust fund was always thereafterward taken and received by said William J., to be invested for your oratrix as aforesaid, until the month of June, A. D. eighteen hundred and sixty, as aforesaid. Nor did the said William J. ever afterwards, or at any time, state to your oratrix that the remaining part of said sum of twenty-four hundred dollars given to their two sons was to be repaid to him, the said William J., by your oratrix out of said trust fund, or in any other manner, or ask of your oratrix any paper, receipt, or voucher to show that said payment was to be refunded by your oratrix, and was not a contribution by him towards said gifts to his children.

Eighth. That after your oratrix ceased to live with her said husband, in the month of June, A. D. eighteen hundred and sixty, as aforesaid, he removed from said State of Massachusetts to the State of Rhode Island, where he continued to live, refusing to see or have any personal communication with your oratrix, until the second day of April, in the year of our Lord eighteen hundred and sixty-five, when he died, leaving, as your oratrix is informed and believes, property and estate of the value of about twelve hundred and fifty thousand dollars; and that, during that period, and thence hitherto, your oratrix received the income of said trust fund as her only means of support.

Ninth. Your oratrix has performed all things by her to be performed pursuant to said indenture, bearing date February twenty fourth, A. D. eighteen hundred and forty-six; and she charges that said William J. was, pursuant to his agreement aforesaid, bound to invest all the said sums so received by him in trust and belonging to your oratrix, and the income and accumulations of such investments, and to pay over and transfer the same to your oratrix whenever thereto requested; and that

although, as she, since the death of the said William J., has been informed and believes, he, the said William J., made no separate
9 and distinct investment of said sums, nor of the income thereof in his name, declaring himself to be the trustee of your oratrix, yet the said William J. did invest each and all of said sums when, or soon after the same were received, together with his own moneys, uniting the moneys of your oratrix and his own in making said investments, and that your oratrix is entitled to an apportionment of said investments, and that the portion thereof so made with the money of your oratrix be decreed to be held in trust for her, and that the truth of the matters aforesaid would appear if the said defendants would produce, as they ought to do, the bank-books, books of account, and other books and papers showing the deposits made by said William J. of the moneys of your oratrix, and the disposition and investment of the same.

Tenth. Your oratrix has applied to said executors of the will of the said William J. to account with, transfer, and pay over to her the property in which her said moneys have been invested by the said William J., and the income thereof, and to account to and pay over to her all moneys due to or belonging to her under said trust, with the increase of the same, or interest thereon, but said executors refuse so to do.

To the end, therefore, that the said defendants may, if they can, show why your oratrix should not have the relief hereby prayed, and may, upon their several and respective corporate oaths, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by note hereunder written, they are respectively required to answer; that is to say:

First. Whether or not the original of the paper, a copy of which is annexed to this bill, marked B., was not found among the papers of said William J. Walker, which came to your hands as executor of his will; and will you produce and file with the clerk said original paper?

Second. Whether or not there has come into your hands, as executor of the will of the said William J. Walker, any bank-books, books of account, or any other books or papers of any description that show, or have a tendency to show, in whole or in part, the moneys deposi-
10 ited by said William J., in any bank or banks, and withdraw therefrom, with the dates and amounts thereof, between the first day of July, eighteen hundred and forty-six, and the first day of July, eighteen hundred and sixty; and if so, will you give a list or description thereof?

Third. Whether or not there has come to your possession, as executor as aforesaid, any books of account, or any other books, documents, or papers, which show that said William J. made, between the dates aforesaid, any investment of any moneys in trust for, or in any way for the benefit of, the complainant; and, if so, will you give a description and list thereof?

Fourth. Whether or not there has so come to your possession any books, documents, or paper writings, which show, or have a tendency to show, what investments of moneys were made by said William J. in any stocks, or property of any kind, during the period aforesaid; and will you give a list or description of the same?

And your oratrix prays that an account may be taken of all investments so made by said William J., in which she is or may be found to be interested, as aforesaid, with the income thereof; and that the defendants may be decreed to transfer to her the whole, or such portion

of said investments as she may be entitled to, together with all income thereof not invested, with interest thereon; or if said William J. made no investments of said moneys so received by him in trust for that purpose, then, that said defendants be decreed to pay to your oratrix the amount of all the moneys so received by the said William J. in trust, to be invested as aforesaid, together with interest on each of said sums from the date of its receipt by said William J., compounded semi-annually; and that your oratrix may have such other and further relief in the premises as the nature and circumstances of her case may require, and as to your honors shall seem meet.

May it please your honors to grant unto your oratrix a writ of subpœna, to be directed to the said Joseph S. Beal and Alexander S. Wheeler, thereby commanding them, and each of them, at a certain time, and under a certain penalty therein to be limited, personally to appear before your honors in this honorable court, and, then and
11 there, full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet.

ELIZA WALKER,
By her solicitors, THAXTER & BARTLETT.

S. BARTLETT,
B. R. CURTIS,
Of Counsel for Plaintiff.

N. B.—Each of the defendants is required to answer each of the foregoing interrogatories.

Exhibit A.

1846.	July 1st		$1,918 90
1847.	Jan. "		1,169 00
"	July "		1,526 82
1848.	Jan. "		1,165 86
"	July "		1,455 63
1849.	Jan. "		1,285 73
"	July "		1,443 12
1850.	Jan. "		806 30
"	July "		1,152 74
1851.	Jan. "		914 63
"	July "		1,830 86
1852.	Jan. "		1,228 48
"	July "		1,504 32
1853.	Jan. "		758 65
"	July "		1,146 40
1854.	Jan. "		991 48
"	July "		1,373 13
1855.	Jan. "		1,186 66
"	July "		1,470 04
1856.	Jan. "		1,289 35
"	July "		1,474 15
12 1857.	Jan. "		1,254 21
"	July "		1,434 97
1858.	Jan. "		1,246 46
"	July "		1,461 80
1859.	Jan. "		1,280 17
"	July "		1,429 13
1860.	Jan. "		1,341 35

Exhibit B.

Out of the sum of 2,087 dollars and 97 cents, which I have received of the trustees, as specified in their two first accounts, I have refunded to my husband $1,500, fifteen hundred dollars, being part payment of 24 hundred dollars, which he gave, at my request and on my account, in equal proportion to my two sons, John Brooks and Joseph Hurd; and I agree that the like sum of 12 hundred dollars shall be given successively to my other children, Frances Emily, Kate Edward, and Abby J. Walker, in such manner as may be agreed upon between me and my husband, as far as the income or the trust property will allow, reserving to myself the right to use as much of said income as I may need for private expenses and any charitable objects I may wish to favor.

ELIZA H. WALKER.

BOSTON, *March* 27, 1847.

Exhibit C.

An indenture of two parts, made and concluded this twenty-fourth day of February, in the year of our Lord eighteen hundred and forty-six, by and between William J. Walker, of Charlestown, in the county of Middlesex, and commonwealth of Massachusetts, physician, of the first part, and Uriel Crocker, of Boston, in the county of Suffolk, in said commonwealth, bookseller; Thomas Marshall, of said Charlestown, gentleman; and John B. Walker, of said Boston, physician; and Eliza Walker, wife of the said William J. Walker, of the second part:

Whereas the said William J. Walker and Eliza Walker, his wife, have agreed to live separate and apart from each other during
13 their coverture; and previous to such separation the said William J. hath consented thereto: And, with the intent that she may support herself in a suitable manner, he hath also proposed and agreed that she shall have, keep, and enjoy all the articles of jewelry and clothing owned by him, but being now in her actual possession; and also, all such real estate and personal property as she may hereafter acquire by descent, or devise from any person or persons, free from his debts, incumbrances, or control, and from all claim or demand by, from, or under him, but upon the conditions contained in this indenture.

Now, this indenture witnesseth, that for the consideration aforesaid, and in consideration of one dollar paid to the said William J. Walker by the said Uriel Crocker, Thomas Marshall, and John B. Walker, the receipt of whereof is hereby acknowledged, and also in consideration of the covenants hereinafter contained, on the part of the said Uriel Crocker, Thomas Marshall, and John B. Walker, to be kept and performed, the said William J. Walker doth hereby grant, convey, and confirm, assign, and transfer unto the said Uriel Crocker, Thomas Marshall, and John B. Walker, certain land in that part of said Boston, called the "South Cove," being the four lots of land numbered five hundred and sixty-eight, five hundred and sixty-nine, five hundred and seventy-four, and five hundred and seventy-five, upon a plan of lands of the "South Cove corporation," drawn by Francis Jackson, agent, dated April 23d, 1840, and recorded at the end of the 454th book of the records of the registry of deeds for said county of Suffolk; which four lots of land, hereby conveyed, contain five thousand and forty square feet, and comprehend all the land conveyed to said William J. Walker by the South Cove corporation, by deed, bearing date April 23rd, 1840, recorded in said registry, book 459, leaf 136—except lot numbered 582, since sold and

conveyed by said William J. Walker to John L. Flanders. Also a strip of land eight inches wide and about fifty-one feet long, on the southerly side of said lot numbered 568, recently conveyed to said William J. Walker, by Josiah L. C. Amee, by deed recorded in said registry, and all buildings standing on the above-granted land, and all rights, easements, privileges, and appurtenances thereto belonging, subject to all reservations and restrictions mentioned and referred to in the said deed
14 of said corporation, and to all agreements now existing, concerning any railroad or railroad tracks.

Also five deeds of mortgage, all bearing date the first day of January, A. D. eighteen hundred and forty-four, executed by John H. Braynard to the said William J. Walker, each made to secure the payment of a promissory note, whereby the said Braynard promises to pay the said William J. Walker, or order, thirty-seven hundred dollars in three years from the said first day of January, with interest. Also the said five promissory notes, each for thirty-seven hundred dollars and interest, and all bearing even date with said five mortgages. The said mortgages are recorded in said registry, book 517, leaves 123, 127, 133, 136, and 140.

Also one other deed of mortgage, bearing date the first day of July, A. D. 1845, recorded in said registry, book 547, leaf 123, made by Jeremiah Martin to said William J. Walker, to secure the payment of a promissory note of even date therewith for four thousand dollars, payable in three years from said first day of July; also the said last-mentioned promissory note; also all lands and real estate described and conveyed in said mortgage-deeds, respectively, subject to redemption according to law, and all principal moneys that may become due on said several notes and mortgages, and all interest that may grow due thereon, respectively, after the first day of January last past; excepting, and it being well understood that the sum of six hundred dollars, principal money, has been paid on one of said promissory notes made by said Braynard.

To have and to hold the same unto them, the said Uriel Crocker, Thomas Marshall, and John B. Walker, and their assigns, and to the survivors of them and their assigns; and to the survivor of them, his heirs, executors, administrators, and assigns; but upon the trusts, and to and for the intents and purposes hereinafter declared concerning the same; that is to say—

First. During the life of the said Eliza Walker, to hold the above-granted premises, and collect and receive the rents, interest, and income which shall accrue from said real estate and personal property, and from any property, estates, or securities in which the same or any part thereof shall be vested; and after deducting all charges for insurance, re-
15 pairs, taxes, and all other necessary and proper charges and expenses, and a reasonable compensation for their own services, to pay all the residue of the said rents, interest, and income to the said Eliza Walker annually, or oftener, in every year during her natural life, for her sole and separate use and benefit, and upon her own order or receipt in writing; and her receipt for all rents, interest, and income so paid to her shall, notwithstanding her coverture, be a sufficient acquittance.

Secondly. And at and upon the decease of the said Eliza Walker, then, in further trust, to convey in fee simple, transfer, pay, and deliver the granted premises, or the property in which the same may be vested, or so much thereof as may then remain undisposed of, and the rents, interest, and income then due thereon, to the child or, if more than one,

children, then living of the said William J. Walker and Eliza Walker, in equal shares, and to the lawful issue, then living, of any or either of said children then deceased, by right of representation; such issue to take and hold the same share which his, her, or their parent, if then living, would be entitled to, to hold the same to them, their heirs and assigns. (And) in default of any such child or issue then living, then in trust to convey, transfer, pay, and deliver the same to the said William J. Walker, (if then living,) to hold the same to him, his heirs, and assigns. But if the said William J. shall not be then living, and in default of any such child or issue then living, then in trust to convey in fee simple, deliver, and transfer the same to such heirs or legal representatives of the said William J. as would be entitled thereto, if the said William J. had died, seized and possessed thereof, and intestate.

Provided, nevertheless, and it is well understood and expressly agreed, and the aforegoing grant and transfer is upon the condition, that if the said Eliza Walker shall neglect or refuse, for the space of three days after being requested in writing, (unless disabled by act of God, and in that event for the space of three days after removal of such disability,) to release to the purchaser or grantee her right of dower in all or any real estate which the said William J. now holds, or may hereafter hold, upon any sale or disposition thereof by the said William J.; or if she (surviving him) shall, after his decease, neglect or refuse (when
16 requested by either of his heirs, executors, or administrators) to release all her dower and right of dower in his real estate, and all her right, title, and interest in and to his personal property, and all allowance therefrom, excepting the interest and income to which she may be entitled by virtue of this indenture, then and in either event, and upon such her neglect or refusal, the estate of the said Uriel Crocker, Thomas Marshall, and John B. Walker, their successors and assigns hereby created shall cease, and be determined; the aforegoing grant and transfer shall cease and be void; and the property herein granted in trust shall be conveyed, transferred, and delivered, without delay, by the trustees, who may then hold the same to the said William J. Walker, if he shall then be living, his heirs, and assigns; or, if he shall not then be living, to his heirs-at-law, their heirs, and assigns.

Thirdly. And the said trustees, the survivors and survivor of them, and their successors, are hereby fully authorized and empowered to sell, convey in fee simple, and dispose of all and singular the said trust, property, and estate, real and personal, or any part or parts thereof, by public auction or private sale, whenever, in the exercise of a sound discretion, they shall deem such sale expedient, and shall apply the net proceeds of every such sale to the payment of any debts contracted by the said Eliza, or any demands existing against her; and after payment thereof, and all necessary charges and expenses, shall vest the residue of such proceeds in the manner hereinafter directed; and the same may resell and reinvest as aforesaid; but making all such investments upon the trusts herein declared concerning the granted premises. Provided, that no such sale shall be made during the life of said William J. without his request thereto being previously made in writing to said trustees.

Fourthly. The said trustees and their successors shall, during the life of the said Eliza, invest all principal moneys which they may receive in the premises, and all net proceeds of any sale or sales which they may make of any real estate or personal property held by them in trust as aforesaid, in the care of the Massachusetts Hospital Life Insurance Company, or in stocks, securities, or promissory paper of said commonwealth, or of the city of Boston, or in promissory paper secured by

mortgage of real estate in said Boston; but making all such
17 investments upon the trusts herein declared concerning the granted premises.

Fifthly. And it is also agreed and declared, that the said trustees shall and may, from time to time, during the life of said Eliza, out of the said principal trust funds, and out of the interest and income thereof, pay any debts separately contracted by her, and reimburse and indemnify themselves, the said trustees, and every of them, for any and all moneys which may be due to them, any, or either of them, for or on account of any debts separately contracted by her, and paid by said trustees, any, or either of them, with interest; and all liabilities, expenses, and charges which said trustees may have sustained or incurred by reason thereof, or in the execution of the trusts aforesaid, or on account of any matter relating thereto. And the balance of said income and principal, trust funds and property, shall be managed and disposed of as hereinbefore directed.

Sixthly. And it is hereby declared and agreed, that if the said trustees, any, or either of them, shall die or relinquish said trusts before the same shall be fully executed or determined, the survivors or survivor of them shall nominate and appoint some other suitable and responsible person or persons to be a cotrustee or cotrustees with the surviving or remaining trustee or trustees, for the purposes aforesaid; every such appointment of any new trustee or new trustees to be approved in writing by the said William J. Walker, or by the judge of probate for the county of Suffolk, or of Middlesex for the time being. And in default of such appointment of a new trustee or new trustees, whenever the same shall be necessary, a new trustee or new trustees shall in every case be appointed by either of the said judges of probate, or by one or more of the justices of the supreme judicial court in said commonwealth. And the surviving or remaining trustees or trustee, or (if all of them shall have deceased) the executors or administrators of the last survivor of them shall convey, assign, transfer, and deliver all and singular the said trust property and estate in such manner, as that the same shall be vested in such new trustee or new trustees, and the surviving trustees or trustee, or in such new trustees,
upon the trusts, for the purposes and subject to the limitations
18 and provisions herein contained. And so, from time to time, whenever and as often as, during the existence of said trusts, any trustee or trustees in the premises shall die or relinquish said trusts, and so that the said trust property may never remain in the hands or possession of the heirs, executors, or administrators of any deceased trustee.

Seventhly. And the said Uriel Crocker, Thomas Marshall, and John B. Walker, for themselves and their respective heirs, executors, and administrators, hereby covenant and agree, to and with the said William J. Walker and Eliza Walker, and each of them, and their respective heirs, executors, and administrators, that they, the said Uriel Crocker, Thomas Marshall, and John B. Walker, will, severally and respectively, faithfully perform and fulfill all and singular the trusts herein expressed and contained, according to the true intent and meaning of this indenture; and will well and truly make and render accounts, whenever and as often as thereto requested, to the said William J. and Eliza, respectively, and their respective legal representatives, concerning all proceedings of said trustees; each of which accounts shall exhibit a full statement of all payments and receipts by said trustees and each of them, subsequent to the previous account rendered, accompanied by proper vouchers.

Eighthly. The said trustees may authorize any person or persons they think suitable to collect and receive the income of said trust property, and such authority at pleasure revoke; and the said trustees shall not, nor shall either of them, be liable or responsible for any loss which may happen by or through any such agent; and the said trustees shall not, nor shall any or either of them be answerable for any loss that may happen by or in the payment or investment of any money, or any matter or thing relating to the trust premises or trust property, unless it shall happen by or through his or their wilful default; and each of them shall be liable only for his own wilful defaults, and not otherwise, nor the one for the other.

Ninthly. And the said William J. Walker, for himself, his executors, and administrators, doth hereby promise and agree, to and with the said Uriel Crocker, Thomas Marshall, and John B. Walker, their successors and respective heirs, executors, and administrators, that
19 it shall and may be lawful for the said Eliza Walker, and that he, the said William J., will permit her, at all times hereafter, to live separate and apart from him, and in such place or places (excepting his own place of residence) as she may select; that he will not disturb her for so doing, nor any person or persons for receiving or entertaining her; that he will not claim or demand any of the said articles of jewelry or clothing which she has in her possession, nor any property which may hereafter come to her by devise or descent, but that she may enjoy and dispose thereof as if she were unmarried; and that so long as the said trustees and the said Eliza shall keep and perform their covenants, promises, and agreements herein contained, it shall be lawful for the said trustees and their successors to demand and receive the interest and income of said trust property upon the trusts aforesaid, and dispose thereof and of the granted premises as aforesaid, and not be liable to any suit or demand of the said William J. Walker therefor; that, during the lives of the said William J. and Eliza, she may demand and receive the rents and income of all real estate which she may acquire by devise or descent, for her sole use and benefit; and receive and dispose of as she may think proper all personal property so acquired by her hereafter, without any account to be rendered thereof to the said William J. Walker; and also, that if the said Eliza shall hereafter sell and dispose of any real estate which she may have in her own right, that he, the said William J., will, on request, sign and execute any deed or deeds releasing the same, and all his interest therein, and confirm such disposition made by her; and that, if he shall survive her, he will, on request of her heirs, release all right and title he may have as tenant by the curtesy, in and to any such real estate.

Tenthly. And the said Uriel Crocker, Thomas Marshall, and John B. Walker, in consideration of the premises, and of one dollar paid to them by the said William J. Walker, the receipt whereof is hereby acknowledged, and of the covenants aforesaid, do, for themselves and their respective executors and administrators, jointly and severally, covenant and agree, to and with the said William J. Walker, his executors, and administrators, in manner following; that is to say: That the said Eliza Walker shall at all times hereafter live separate and apart from
20 the said William J. Walker, and shall have no intercourse whatever with him, unless they shall elect to live together; that out of the granted premises, and the interest and income thereof, they, the said trustees, will faithfully cause to be paid all debts which the said Eliza shall hereafter contract with any person and persons, and save,

defend, and keep harmless the said William J., his heirs, executors, and administrators, and his and their property against the same, and of and from all payment of alimony or allowance for or in behalf of the said Eliza hereafter; that the said Eliza shall, from time to time, and whenever and as often as requested, release her dower as aforesaid; and that whenever any of the income of the property herein assigned for her separate benefit and support, and to which she shall have a right in equity and good conscience, shall come into the hands of the said trustees or their representatives, she shall and may, at any and all times, have an action at law therefor, in the name of herself and the said William J., or of either of them, or of his legal representatives, as the case may require; and the said William J. hereby agrees that his or their names may be used accordingly, but without any cost to him or his representatives.

And the said trustees and the said Eliza Walker hereby declare that the provision herein made for her, by the said William J. Walker, is fully sufficient and entirely satisfactory; and she hereby accepts the same in full satisfaction for her support and maintenance, and of all alimony whatsoever during her coverture; and she hereby promises that she will at all times hereafter live separate and apart from the said William J., unless they shall mutually agree to live together; and that she will faithfully keep and perform all and singular the agreements and provisions herein contained, and on her part to be kept and performed.

It is well understood and expressly agreed, that if the said William J. Walker and Eliza Walker shall at any time or times hereafter cohabit and live together as heretofore, these presents shall not be thereby rendered invalid; but the trusts herein contained shall be executed (subject to the conditions above expressed) in like manner as if the said William J. and Eliza should live separate and apart, and cease all intercourse from and after the date of this indenture.

21 In witness whereof, the parties aforesaid have to this and one other instrument, of like tenor and date, set their hands and seals the day and year first before written.

WILLIAM J. WALKER.
URIEL CROCKER.
JOHN B. WALKER.
T. MARSHALL.
ELIZA WALKER.

Signed, sealed, and delivered in presence of—the words "also, the said last-mentioned promissory note," and "year" first interlined on the second page—

JOHN R. ADAN.
H. SIDNEY WALDO.

22 This cause was thence continued to the May term of this court, A. D. 1866, when, by consent, on the thirteenth day of July, the following answer was filed, namely:

23 *Defendants' answer.*

United States circuit court, district of Massachusetts, May T., 1866.

ELIZA WALKER
vs.
JOSEPH S. BEAL AND ALEXANDER S. Wheeler, executors, &c. } In equity.

The joint and several answer of Joseph S. Beal and Alexander S.

Wheeler, the defendants, to the bill of complaint of Eliza Walker, complainant.

The defendants, now and at all times saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants answering, say—

That William J. Walker deceased at Newport, in the State of Rhode Island, on or about the second day of April, 1865, testate, leaving a large estate, both real and personal, situated in Rhode Island and
24 Massachusetts, and elsewhere, and that his will was duly proved and allowed at a probate court holden at Newport, in said State of Rhode Island, on the twenty-fourth day of June, 1865, and that these defendants and Benjamin Finch, of said Newport, were duly appointed executors of the same in said State of Rhode Island, a copy of which will is annexed hereto, and marked "Exhibit A"; and these defendants allege that afterwards, to wit, on the twenty-first day of August, A. D. 1865, these defendants filed a copy of said will of said Walker, in the probate court for the county of Suffolk, in the State of Massachusetts, and the same was duly proved and allowed as and for the last will and testament of the said Walker, and these defendants and the said Finch were also appointed executors of said will in said State of Massachusetts. And these defendants, further answering, admit that said complainant was formerly, as alleged in the bill, the lawful wife William J. Walker, and that the complainant and said William J. formerly lived in Charlestown, Massachusetts; but these defendants are ignorant, and can therefore neither admit nor deny whether the said William J. had been guilty of such extreme cruelty towards the complainant that she was compelled to leave his house, as alleged in complainant's said bill, or whether said acts and conduct of said William J. were such as to entitle the complainant to maintain a suit for divorce from bed and board, and for a decree for alimony, or what estate the said William J. then had, and leave the complainant to prove the same, if material.

And these defendants, further answering, say that they are informed, and believe it to be true, that an agreement, a copy of which is annexed to the complainant's bill, was executed by the complainant and the said William J., and the said Uriel Crocker, Thomas Marshall, and John B. Walker, as trustees under the same, and containing the provisions substantially as set forth in the complainant's bill, but these defendants, for greater certainty therein, crave leave to refer to the said indenture when the same shall be produced; but whether the complainant had, before the execution of said indenture, applied to counsel to commence proceedings for a divorce from the said William J., and whether the said William J. entered into said indenture to induce a forbearance of said proceedings for divorce, and to avoid a decree for alimony against
25 him, these defendants are ignorant, and can therefore neither admit nor deny the same, but leave the complainant to prove the same, if material.

And these defendants further say that they are ignorant whether the said complainant lived for any and what length of time apart from the said William J., in pursuance of said indenture, or whether she afterwards returned to live with him in April, 1846, and continued to live with him until June, 1860, and whether she was then compelled by his cruel and harsh treatment of herself and her daughters to cease to live

with him, and can therefore neither admit nor deny the same, but leave the complainant to prove the same, if material.

And these defendants, further answering, say that they are ignorant whether the complainant delivered at any time to the said William J. any portion of the income of said trust fund paid to her by the said trustees, or paid over any part of the same to the said William J., and can therefore neither admit nor deny the same, but leave the complainant to prove the same, if material; but these defendants deny, if any portion of the income of said trust-fund was at any time so paid to the said William J. by the complainant, that the same was paid to him upon any trust, and they allege that if the said sums of money so paid were paid to the said William J., as and in the manner set forth in said bill of complaint, the moneys so paid became the sole property of the said William J., free and discharged of any trust whatever for the complainant; and that no claim, either at law or in equity, was created thereby against the said William J. in his lifetime in favor of the complainant for any moneys so paid, or against his estate since his decease.

And these defendants, further answering, say that said agreement or indenture of separation made between the said complainant and the said William J. was and is wholly void by the laws of the State of Massachusetts, where the same was made, and where all the parties thereto then resided, because the same was contrary to law and public policy; and the said complainant is not therefore entitled to any such relief as prayed in and by her said bill, or any other relief whatever; and these defendants pray that they may have the same benefit and advantage of this objection as if they had demurred to said bill.

And these defendants, further answering, say that they are ignorant whether the complainant at any time called upon the said William
26 J. for the repayment of any part of said moneys alleged to have been paid to him by the complainant, or whether she requested him, the said William J., to give to their sons, John Brooks and Joseph Heard, the sum of twelve hundred dollars out of the same, or whether she agreed with the said William J. that he should retain out of the moneys so alleged to have been paid to him, the sum of fifteen hundred dollars in part payment of twenty-four hundred dollars alleged to have been paid to said sons by the said William J., or whether the said William J. took from the complainant, as a voucher, the paper referred to in her said bill, as annexed thereto and marked B; or whether the complainant agreed that the like sum of twelve hundred dollars might be given to the rest of their children from the income of said trust fund; or whether the said agreement or the said proposed gift was ever carried into effect; or whether the income of the complainant from said trust fund was afterwards taken by the said William J. until the month of June, 1860; or whether the said William J. ever stated to the complainant that the remaining part of said twenty-four hundred dollars given to their two sons was to be repaid to him out of said trust fund, or in any other manner; or whether the said William J. asked of the complainant for any paper to show that said payment was to be refunded by the complainant; and can neither admit nor deny the same, but leave the complainant to prove the same, if material.

And the defendants, further answering, say that they are informed and believe that the said William J. removed, on or about the month of April, 1861, from said State of Massachusetts to said State of Rhode Island, where he lived until his death, as before mentioned; and that he deceased leaving a large estate; but whether the said William J., during his residence there, refused to see or have any personal communication

with the said complainant, and whether the complainant during said period received the income of said trust fund as her only means of support, these defendants are ignorant, and can neither admit nor deny the same, but leave the complainant to prove the same, if material.

And these defendants, further answering, say that they are ignorant whether the complainant has performed all things by her to be performed by the said indenture, and can therefore neither admit nor deny the same, but leave the complainant to prove the same, if material;

27 but these defendants deny that said William J. was bound, by any agreement or otherwise, to invest the sums alleged to have been received by him, and the income of the same, and to transfer and pay over the same to the complainant, or that the complainant is entitled to an apportionment of the investments of the said William J., as claimed in and by her said bill.

And these defendants further say, that inasmuch as the said William J. was a citizen of Rhode Island, and deceased in that State, and his will was first duly proved there, and that is the place of original proof and administration of his will, the complainant should have made her claim, if any she has, upon the executors of the estate in that State, instead of the executors of the will in the State of Massachusetts, and should have brought her suit in Rhode Island instead of Massachusetts, and these defendants pray the same benefit and advantage of this objection as if the same had been pleaded.

And in answer to complainant's first interrogatory in her bill these defendants say that they are informed and believe that the original of the paper, a copy of which is annexed to the complainant's bill, and marked B, was found among the papers of the said William J., which came to their hands as executors, and they produce and file with the clerk of the court the said original paper.

And in answer to the second interrogatory in complainant's said bill, these defendants say that they annex copies of all the bank-books which have come into their hands or possession, and having any deposits of said William J., between July 1st, 1846, and July 11, 1860, the dates inquired of in complainant's bill, and that no books of account, or other books or papers of any description, have come to their hands or possession as executors of said will that show, or have a tendency to show, in whole or in part, the moneys deposited by said William J. in any bank or banks or withdrawn therefrom between the periods inquired of in this interrogatory.

And in answer to the third interrogatory in complainant's said bill, these defendants say that no books of account, or any other books, documents, or papers have come to their possession, as executors, which show that said William J. made any investment of money in trust for or in any way for the benefit of the complainant, between the dates inquired of in said interrogatory.

28 And in answer to the fourth interrogatory in complainant's said will, these defendants say that no books, documents, or papers or writings, have come to their possession showing, or having a tendency to show, what investments of money were made by said William J. in any stocks or property of any kind, during the period inquired of, except, perhaps, certain certificates of stocks; and they annex a schedule, marked Exhibit "B," which sets forth the names and dates of all the certificates of stock which they now have in their hands or possession, or which they have had since the filing the complainant's bill, bearing date during the period inquired of in the fourth interrogatory.

Without this, that there is any other matter, cause, or thing, in the

said complainant's said bill of complaint contained, material or necessary, for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH S. BEAL.
ALEXANDER S. WHEELER.

HENRY C. HUTCHINS,
BENJ. F. THOMAS,
Solicitors for Respondents, and of Counsel.

UNITED STATES OF AMERICA,
CIRCUIT COURT U. STATES, *District of Massachusetts, ss:*

JULY 13, A. D. 1866.

Then personally appeared the said Joseph S. Beal and Alexander S. Wheeler, and made oath that the foregoing answer by them subscribed had been read by them; that they knew the contents thereof; and that the same are true so far as stated upon their personal knowledge; and so far as stated upon information and belief they believe them to be true.

Before me,

E. MERWIN,
U. S. Commissioner.

29 *Exhibit "A."*

I WILLIAM J. WALKER of the city of Newport in the county of Newport in the State of Rhode Island lately of the city of Boston in the Commonwealth of Massachusetts, Physician, do make this my last Will.

Item 1. I give, devise, & bequeath to Joseph S. Beal, Alexander S. Wheeler, Morrell Wyman, Jeffries Wyman, John R. Brewer & Thomas T. Bouve, all of Massachusetts and Benjamin Finch of Newport in the State of Rhode Island and the survivors of them & their successors, the following-described real estate situate in said city of Boston, to wit:— four houses situate on Gennessee street, four houses on Oneida street & six small houses between Cove street & Cove place leased to Mr. Jones, and the land under & used therewith, together with all the privileges to the same belonging, to have & to hold the same absolutely & in fee, in trust nevertheless as hereinafter expressed.

Item 2. I also give & bequeath to my said Trustees & the survivors of them & their successors the sum of one hundred & eighty-thousand dollars to be by them selected from such stocks, moneys & other securities as I may possess at my decease, at the market value thereof at the time of the Probate of this Will, to the reasonable satisfaction of my wife Eliza and my children with the approval of the Judge of Probate, where the said Will is proved, for the time being, in trust nevertheless as hereinafter declared.

Item 3. In case of the failure or insufficiency of the income of the real estate & other property already secured to my wife Eliza by an indenture dated February 24, 1846, providing for her separate maintenance, I order my said Trustees at their discretion if necessary to pay over

to her a sum, which together with the income of said estate secured to her shall not exceed three thousand dollars annually, from & out of
30 the income of the property placed in trust in the two preceding items. I having included in the sum given in the second item above any amount of money that in equity or honor may be due to my said wife or children by heirship from her late father or brother Joseph Hurd, deceased. And it is my design & intention that the provision herein made for my wife coupled with the amount secured to her by said Identure shall be in full and in lieu of her dower in my estate.

Item 4. I hereby direct my said Trustees after paying the taxes & expenses of such repairs & improvements as in their discretion they may deem proper on the real estate devised in the first item above, to pay over at their discretion one sixth part of the net income from the rents & profits thereof to each of my children, to wit,—Frances W., wife of Alfred Ladd, Emily, Catherine W., wife of Samuel Shepherd, Edward J., Abigail J., and a sum not exceeding one sixth part thereof to be expended by said trustees as in their discretion may be proper for the support & education of the children of my late son Joseph H., which education shall be directed by my said Trustees, & the sole & separate receipts of my said daughters, without that of their present or of any future husband either of them may have shall be in full discharge of such payments, said amounts to be subject to the contingent payments named in the third item above to my wife.

Item 5. In case of the decease of either of my said children leaving lawful issue, it is my will that they shall receive the share of their parent & that said trusts shall be continued for their benefit during their minority & education, which education shall be directed by the trustees herein named, and after that their share shall be paid over to & distributed among them or him. And after the children of my said son Joseph H. shall attain their majority & have received their education, the portion of the fund intended for their benefit being one sixth of the amount of the trust fund shall be paid to and distributed to & among them equally.

And I do further provide & direct on the decease of any one of my now surviving children, or on my decease, if I shall survive any of them, the one sixth of the estates named above & proceeds of the sale thereof or part thereof, of which such child shall or would be entitled to the income during his or her life shall be assigned conveyed & paid over to his or her then surviving children and the lawful descendants of
31 any then deceased child or children of him or her, the then surviving descendents of any such then deceased child of him or her, to wit,—being my great grand children, shall be entitled to the share of such then deceased grandchild by representation. And I recommend that these devises & bequests, in cases of devisees under age, may be continued under said trusts, & be applied in defraying the expenses of their education so far as this can be advantageously done. And in case of the decease of either of the children of my said son Joseph H., before attaining his or her majority leaving no lawful issue, that portion of the one sixth of the trust funds & the income belonging to said deceased child shall go to the surviving brothers and sisters. And if either of my children shall decease leaving no lawful issue, their portion of said trust funds shall not go to their heirs at law, but shall revert to my estate for the benefit for the residuary legatees.

Item 6. I hereby direct my said trustees to hold, manage & use the sum given them above in Item No. 2, subject to the contingency named in the 3d Item above, for the benefit & use of my said children & the children of my said son Joseph H. and at their discretion to pay over

the net income thereof to my said daughters and my said son Edward J., and use not exceeding one sixth part thereof at their discretion so as to inure to the best good & education of the children of my said son Joseph H. upon the same terms, conditions & receipts as the income of the real estate described and distributed above is expressed, and I also will that in case of the decease of either of my said children as in Item 5 is mentioned, the same trust shall continue for the benefit of any lawful issue they may leave, and the same distribution shall be made of their share of the personal estate given in Item no. 2 above, as is directed with regard to the real estate or the income thereof, and so also with regard to the children and grandchildren of my son Joseph H.

Item 7. I hereby direct that the receipts, named in articles fourth & sixth above, to be taken of my said daughters for all payments of income to them shall be made at the time & date of the payments & said Trustees shall not be authorized to make payment of said income or any part thereof in pursuance of any sale, assignment or transfer by any of the parties entitled to said income.

Item 8. I give devise & bequeath to my said Trustees or the
32 survivors of them & their successors all the real estate I own in the Town of Townsend in Massachusetts to have & to hold the same absolutely & in fee, in trust nevertheless for the sole use and benefit of the children of my said son Joseph H. deceased, until the youngest of said children shall arrive at the age of twenty one years and then said estate is to be divided equally among them, subject to any right of dower or homestead exemption that the widow of my said son Joseph H. may have in the premises.

Item 9. I also give to my said Trustees or whoever shall be Trustees under this Will full power & authority at public or private sale at their discretion to sell & dispose of any & all the real estate devised to them in the first Item and convey the same in fee, receiving therefor a proper consideration, to be by them reinvested in other real estate or such stocks, bonds, mortgages or other securities as they may judge expedient, the income of such reinvestment to be disposed of in the same manner as directed in regard to the original devise, and the same power is hereby given in regard to the estate mentioned in the eighth item above.

Item 10. In case of the non-acceptance, resignation, decease or other failure of either of said Trustees to perform said trusts under this Will, it is my wish & direction, that the remaining or surviving Trustees name a successor subject to the approval of the Court of Probate where this Will is proved, reasonable regard being given to the wishes of the beneficiaries therein named.

Item 11. I request & direct my Executors to pay to the Misses Eliza G. & Emily M. Nicolai of the city of Newport the sum of Eight Hundred dollars annually during their lives, to be paid in quarterly payments of Two Hundred dollars each, the first payment to be made as of the time of my decease, & upon the decease of either of the said sisters, the full amount of the said annuity is to be paid to the survivor.

Item 12. I give & bequeath to the authorities or managers of the Redwood Library in the city of Newport the sum of Ten Thousand dollars to promote the objects of that noble institution.

Item 13. I direct my Executors to pay the following annuities:—

To Mrs. Howe of Medford formerly Mrs. Butters & housekeeper to the late Governor Brooks the sum of Two Hundred dollars annually, in quarterly payments of fifty dollars each, during her natural life.

33 To Mrs. Tolman of Charlestown mother of Mrs. Sevey forty dollars every six months, the first payment of this and the preceding annuity to be made as of the time of my decease & this annuity to continue during natural life.

Item 14. I give & bequeath to Catharine wife of Rev. James Walker the sum of One Thousand dollars.

Item 15. I give & bequeath to the two daughters of Dr. Jeffries Wyman the sum of one thousand dollars each.

Item 16. I give & bequeath to the wife and each of the children of Dr. Morrill Wyman One Thousand dollars.

Item 17. I give & bequeath to my wife & children my large quarto family Bible now with me at Newport.

Item 18. I give & bequeath to Miss Catherine & Miss Mary Stetson, daughters of the late David Stetson of Charlestown one thousand dollars each.

Item 19. I give & bequeath to my cousin Hannah Walker of Burlington, Mass'tts & her heirs one Thousand dollars.

Item 20. I give & bequeath to the wife & each of the daughters of Thomas Marshall one Thousand dollars.

Item 21. I give & bequeath to my niece Charlotte wife of James G. Foster one Thousand dollars.

Item 22. I give & bequeath to Mrs. Mary widow of the late Simon Whitney of Framingham, d'c'd, the sum of two Hundred dollars annually, to be paid in quarterly payments of fifty dollars each during her natural life, the first payment to be as of the day of my decease.

Item 23. I give & bequeath to the Rev. Thomas Hill, President of Harvard University One Thousand dollars.

Item 24. I give & bequeath to John R. Brewer the silver pitcher & Salver given me by my dear & learned friend & pupil John G. Treadwell formerly of Salem.

Item 25. I hereby authorize my said Trustees & their successors to change the investments of any personal estate given them in this Will whenever in their discretion it is deemed advisable.

Item 26. I give & bequeath to Mrs. Morrill Wyman my silver tea pots, Sugar bowl & cream ewer & silver bowl now in use with me at Newport.

34 Item 27. I give & bequeath my silver pitcher now with me at Newport described as the Boylston Prize Medal to Dr. Jeffries Wyman.

Item 28. I give & bequeath all my other silver ware to my wife & daughters to be divided as they may judge best.

Item 29. I give & bequeath to the widow of Dr. Ephraim Buck sen'r. late of Boston One Thousand dollars.

Item 30. I give & bequeath all the furniture & clothing which I have with me at Newport & all my stock of wines, liquors, porter & similar articles to the Misses Nicolai aforenamed.

Item 31. I give & bequeath to Benjamin Finch and Thomas S. Bigley of Newport Five Hundred dollars, in trust nevertheless, to be invested & held by them for the sole use & benefit of Catarina Nicolai Bigley daughter of said Thomas S. & Mary O. Bigley until she arrives at the age of twenty one years or is married, either of which events occuring, the said sum with its increase is to be paid over to the said Catarina 2d together with the New Testament given me by the late Catarina Maria Nicolai.

Item 32. Whereas the stock standing in the name of my wife in the Massachusetts Fire & Marine Insurance Co. and in the Mercantile Marine Insurance Co, have been settled & paid for by me in arranging the

articles of agreement between me & my wife before alluded to, it is my wish & I direct my Executors, in case said stock is not returned or transferred to them within three months after the probate of this Will, to retain from the first payments to her provided for above an amount equal to the value of said shares of stock, this provision is also to apply to my children.

And whereas I have given to my daughter Emily cash and a note of hand to the amount of $2000, and the consideration therefor has wholly failed, in case my said daughter shall demand & recover any amount on said note of my Executors, I direct them to deduct the full amount she may recover thereon from the first payments that may be due from the one sixth part of the trust fund given her in this Will.

Item 33. I give & bequeath to Joseph S. Beal, Morrill Wyman & Jeffries Wyman above named all my books & papers either relating to my estate or otherwise to be by them arranged & preserved for the protection and benefit of my estate.

35 Item 34. All the rest, residue & remainder of my estate, real, personal and mixed, wherever the same may be located, whether now in possession or that I may hereafter acquire, of which I may die seized or possessed or have a right unto, I give devise & bequeath in the following manner, namely: One fourth part thereof to the Massachusetts Institute of Technology:

One fourth part thereof to the Boston Society of Natural History.

The gifts to said two last named institutions to be used & expended in the erection of any buildings necessary for the objects of the institutions and for giving instruction in the elementary branches of science connected therewith.

One fourth part thereof to Tuft's College and

One fourth part thereof to Amherst College all in Massachusetts.

These devises & legacies to Amherst and Tuft's Colleges are to be used for the promotion, study & advancement of Mathematical Sciences.

And I direct that of the sums realized by each of said Colleges from said residuary devise and legacy, a sum not exceeding one third part thereof may be invested or used in erecting or repairing any buildings necessary therefor or in the purchase of mathematical, astronomical and philosophical apparatus for giving efficiency to said devises or legacies and the income of the remaining two thirds shall be appropriated to instruction in said sciences according to specifications of agreement already existing between me and said Colleges.

And in case there is any surplus income more than is needed in these branches the same may be expended in the critical study of the Latin language, instruction to be given in sections as in mathematics.

By the term mathematical sciences I wish to be understood as meaning an accurate and critical study of elementary mathematics; every branch of the pure mathematics: also such studies as are kindred to and founded on mathematics, as applied to astronomy, mechanics, natural philosophy: and all kindred objects: speaking in a liberal and comprehensive manner.

Finally, I request the recipients of the above bequeathed property to realize that no inconsiderable portion thereof has been gathered as the fruits of a laborious vocation, exercised through anxious days and sleepless nights; that it is given to them, *in trust nevertheless*, to be expended so as to inure to the greatest advancement of sound education in
36 the departments as above specified; and the public good. I request that its investment may be safely guarded; that its expenditure may be subject to the strictest economy; yet that it may be appro-

priated liberally where the objects aimed at justify an open hand, and cannot be afforded the cause of education and the public good at less expense.

I hereby appoint as Executors to this my Will the persons above named as Trustees, viz:—Joseph S. Beal, Alexander S. Wheeler, Morrill Wyman, Jeffries Wyman, John R. Brewer and Thomas T. Bouve, all of Mass., and Benjamin Finch of New Port in the State of Rhode Island, on giving bond to pay my funeral charges, debts and legacies.

In Testimony whereof, I have hereunto set my hand and seal, and publish and declare this instrument to be my last Will and Testament written on six sheets or pieces of paper numbered consecutively 1. 2. 3. 4. 5. 6 and this sheet containing thirty-four items numbered accordingly, to each of which sheets I have set my hand or name, this second day of October in the year one thousand eight hundred & sixty-three, in presence of the witnesses named below.

WILLIAM J. WALKER {L. S.}

Signed, sealed, published & declared by the said William J. Walker as and for his last Will & Testament in our presence and the subscribers at his request and in his presence and in the presence of each other hereto set our names as Witnesses.

OLIVER READ,
JOHN T. BUSH,
SAM'L T. MELVILL,
JOHN D. DENNIS.

Copies of bank-books referred to in foregoing answer.

1846.			1846.		
July 1,	To Balance,	$3,309 57	July,	By Cash,	$3,300 00
" 24,		4,461 25			770 00
" 2,		770 00			2,461 25
					6,531 25
				Balance,	9 57
		6,540 82			6,540 82
August 1,	To Balance,	9 57			
October 8,	Cash,	1,000 00	October,	By Cash,	215 52
" 12,	Int. G. H. B.	109 84			50 00
" 20, "	E. A. R.	990 00			1,900 00
" 21,		135 00			2,165 52
				Balance,	78 89
		2,244 41			2,244 41
November 1,	To Balance,	78 89	November,	By Cash,	540 00
" 11,	Cold.	889 95			425 00
					965 00
				Balance,	3 84
		968 84			968 84
December 1,	To Balance,	3 84	December,	By Cash,	107 90
" 1,		6,366 75			300 00
					400 00
					650 00
					400 00
					1,200 00
					1,500 00
					1,200 00
					300 00
					200 00
					70 20
					34 00
					6,362 10
				Balance,	8 49
		6,370 59			6,370 59

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1847.			1847.		
January 1, To Balance,		$8 49	September, By Cash,		$300 00
September 30,		100 00			200 00
" 7,	D.	1,454 25			800 00
" 17,		100 00			51 65
					92 44
					96 39
					1,490 48
				Balance,	172 26
		1,662 74			1,662 74
October 1. To Balance,		172 26	October, By Cash,		117 90
" 30,		140 00		Balance,	194 36
		312 26			312 26
November 1, To Balance,		194 36	November, By Cash,		180 00
" 2,		1,000 00			68 40
" 6,		865 00			1,510 00
" 30,		400 00			1,758 40
				Balance,	700 96
		2,459 36			2,459 36
December 1, To Balance,		700 96	December, By Cash,		350 00
" 20,		500 00			540 00
" 24,	G. W. B.	82 73			890 00
" 31,		93 00		Balance,	486 69
		1,376 69			1,376 69
1848.			1848.		
January 1, To Balance,		486 69	January, By Cash,		850 00
" 19,		385 00		Balance,	666 69
" 28,		100 00			
" 6,		395 00			
" 29,		150 00			
		1,516 69			1,516 69
February 1, To Balance,		666 69	February, By Cash,		600 00
" 15,		250 00		Balance,	316 69
		916 69			916 69
March 1, To Balance,		316 69	March, By Cash,		102 50
" 2,		140 00			450 00
" 20,		350 00			552 50
" 26,	E. W.	121 80		Balance,	775 99
" 21,		400 00			1,328 49
		1,328 49			

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April 1,	To Balance,	$775 99	April,	By Cash,	$500 00
" 10,		70 00			250 00
					55 00
					$805 00
				Balance,	40 99
		845 99			$845 99
May 1,	To Balance,	40 99	May,	By Cash,	$52 24
" 4,	J. H. Flint	553 49			400 00
" 12,		400 00			540 00
					992 24
				Balance,	200 00
		994 48			994 48
June 1,	To Balance,	2 24	June,	By Cash,	305 21
" 14,		200 00			
" 15,		135 00			
" 22,		120 00			
" 29,		75 00		Balance,	227 03
		532 24			532 24
July 1,	To Balance,	227 03	July,	By Cash,	702 53
" 3,		120 00			122 47
" 4,	Dividend,	355 50			50 00
" 8,		500 00			37 12
" 11,		950 00			1,000 00
					90 00
					53 75
					2,055 87
				Balance,	96 66
		2,152 53			2,152 53
August 1,	To Balance,	96 66	August,	By Cash,	582 00
" 21,	R. M.	500 00			
September 6,		150 00	September,		65 67
" 12,		150 00			66 12
" 16,		207 00			20 00
	E. W.	125 00			
					733 79
				Balance,	494 87
		1,228 66			1,228 66
October 1,	To Balance,	494 87	October,	By Cash,	1,103 75
" 2,		718 55			76 25
" 26,		200 00			50 00
					1,230 00
				Balance,	183 42
		1,413 42			1,413 42

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November	1, To Balance,	$183 42	November, By Cash,		$180 00
"	9, Int.	553 49		Balance,	1,471 91
"	11,	740 00			
"	16,	175 00			
		1,651 91			1,651 91
December	1, To Balance,	1,471 94			
"	5,	71 00			82 00
"	9,	97 00			1,358 90
"	19,	133 00			
"	28,	300 00			1,440 90
"	30,	195 000		Balance,	827 01
		2,267 91			2,267 91
1849.			1849.		
January	1, To Balance,	827 01	January, By Cash,		900 00
		169 00			200 00
"	26,	80 00			
"	4, E. W.	160 89			1,100 00
"	5, Int. A. W.	109 83		Balance,	246 73
		1,346 73			1,346 73
February	1, To Balance,	246 73	February, By Cash,		132 50
"	17,	150 00			100 00
					232 50
				Balance,	164 23
		396 73			396 73
March	1, To Balance,	164 23	March, By Cash,		45 00
"	3,	150 00			1,000 00
"	5,	275 00			
"	6,	87 00			1,045 00
"	8,	180 00		Balance,	86 23
"	14,	275 00			
		1,131 23			1,131 23
April	1, To Balance,	86 23	April, By Cash,		82 00
"	3,	400 00			200 00
"	5,	100 00			214 00
		950 00			51 00
"	21,	230 00			
					547 00
				Balance,	1,219 23
		1,766 23			1,766 23
May	1, To Balance,	1,219 23	May, By Cash,	$ 540 / 2,180	2,720 00
"	3,	950 00			
"	1, Int.	553 49			

41

June 2,	A. G. M.	$742 35	June,		$720 00
" 16,	B. M. J.	105 00	July 28,		150 00
July 28,		13,450 00			
" 31,		150 00			
		17,170 07			3,590 00
" "	S. W.	250 00		Balance,	13,830 07
		17,420 07			17,420 07
August 1,	To Balance,	13,830 07	August,	By Cash,	37 98
" 7,		1,850 00			6,000 00
" 16,		250 00			3,000 00
" 30,		250 00			
					9,037 98
				Balance,	7,142 09
		16,180 07			16,180 07
September 1,	To Balance	7,142 09	September,	By Cash,	1,998 00
" "	E. W.	250 00			2,000 00
" "		266 00			1,000 00
" 5,		1,443 12			
" 8,		500 00			4,998 00
				Balance,	4,603 21
		9,601 21			9,601 21
October 1,	To Balance,	4,603 21	October,	By Cash,	6,961 50
" 1,		750 00			1,292 81
" 2,		620 00			
" 16,		601 00			8,254 31
" 10,		1,050 00		Balance,	869 90
" 20,		1,500 00			
		9,124 21			9,124 21
November, 1,	To Balance,	869 90	November,	By Cash,	394 00
" 2,		875 00			1,236 86
"		553 49			
" 13,		137 00			1,630 86
" 20,		1,202 50		Balance,	2,507 03
" 24,		500 00			
		4,137 89			4,137 89
December, 1,	ToBalance,	2,507 03	December,	By Cash,	30 00
" 24,		1,000 00			96 58
					223 25
					1,600 00
					1,949 83
				Balance,	1,557 20
		3,507 03			3,507 03

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1850.			1850.		
January 1,	To Balance,	$1,557 20	January,	By Cash,	$78 75
" 4,	E. W.	165 70			55 00
" 13,		150 00			1,467 16
					50 00
					1,650 91
				Balance,	221 99
		1,872 90			1,872 90
February, 1,	To Balance,	221 99	February,	By Cash,	41 00
		250 00			530 75
" 11,		1,000 00			1,500 00
" 22,		1,006 30			
					2,071 75
				Balance,	406 54
		2,478 29			2,478 29
March, 1,	To Balance,	406 54	March,	By Cash,	41 25
" 2,		400 00			1,428 43
" 1,	J. C.	500 00			6,075 00
" 4,		75 00			82 00
" 5,		75 00			
" 12,		285 00			7,626 68
" 13,		60 00		Balance,	334 86
" 14,		160 00			
" 16,		6,000 00			
		7,961 54			7,961 54
April, 1,	To Balance,	334 86	April,	By Cash,	1,045 50
"		200 00			45 00
"		520 00			
" 2,		100 00			1,090 50
" 5,		110 00		Balance,	3,424 36
" 6,		300 00			
" 9,		510 00			
" 12,		800 00			
" 20,		200 00			
"		990 00			
" 22,		100 00			
" 27,		350 00			
		4,514 86			4,514 86
May, 1,	To Balance,	3,424 36	May,	By Cash,	5,000 00
"	H.	553 49			82 00
" 2,		400 00			3,770 00
"		875 00			90 00
" 3,		500 00			2,500 00

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May 7,	To Balance,	$200 00			$950 00
" 8,		3,000 00			
" 15,		2,620 00			12.392 00
" 20,		900 00		Balance,	80 85
		12,472 85			12,472 85
June, 1,	To Balance,	80 85	June,	By Cash,	500 00
" 3,		184 50		Balance,	403 35
" 4,		238 00			
" 24,		100 00			
" 29,		300 00			
		903 35			903 35
July 1,	To Balance,	403 35	July,	By Cash,	180 00
"		100 00			150 28
" 3,		200 00			
" 5,		100 00			330 28
" 8,		104 00		Balance,	777 07
" 9,		100 00			
" 20,		100 00			
		1,107 35			1,107 35
August 1,	To Balance,	777 07	August,	By Cash,	1,000 00
" 30,		275 00			41 00
"	E. W.	850 00			147 87
					275 00
					1,463 87
				Balance,	438 20
		1,902 07			1,902 07
September 1,	To Balance,	438 20	September,	By Cash,	1,480 00
" 4,		850 00			150 00
" 5,		200 00			100 00
" 7,		100 00			100 00
" 13,		120 00			100 00
" 14,		100 00			
" 19,		150 00			1,930 00
" 20,		135 00		Balance,	163 20
		2,093 20			2,093 20
October 1,	To Balance,	163 20	October,	By Cash,	150 00
" 8,		200 00			300 00
" 22,		500 00			250 00
" 25,		640 00			
" 29,		875 00			700 00
		2,378 20		Balance,	2,231 69
" 31,	Int. Hayward,	553 49			
		2 931 69			2,931 69

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November 1, To Balance,	$2,231 69	November, By Cash,	$100 00
" 2,	250 00		1,000 00
" 21,	10,000 00		50 00
" 25,	392 00		217 60
" 27,	466 00		450 00
			16 67
			90 00
			3,665 00
			5,172 83
			200 00
			1,673 14
			12,625 24
		Balance,	704 45
	13,339 69		13,339 69
December, 1, To Balance,	704 45	December, By Cash,	60 40
" 2,	150 00		250 00
E. W.	300 00		25 00
			150 00
			500 00
			985 40
		Balance,	169 05
	1,154 45		1,154 45
1851.		1851.	
January 1, To Balance,	169 05	January, By Cash,	180 00
" 2,	200 00		510 08
" 4,	150 00		260 00
" 6,	300 00		40 00
" 7,	200 00		61 00
" 11,	100 00		2,020 00
" 13,	100 00		2,896 28
" 16,	120 00		413 60
" 20,	5,000 00		
" 25,	200 00		6,380 86
" 27,	180 00	Balance,	398 19
	6,779 05		6,779 05
February 1, To Balance,	398 19	February, By Cash,	53 96
" 1,	120 00		250 00
" 13,	600 00		125 00
" 15.	225 00		1,700 00
" 18,	100 00		
" 20,	520 00		2,128 96
" 28,	50 00	Balance,	84 23
4,	200 00		
	2,213 19		2,213 19

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March 1,	To Balance,	$84 23	March, By Cash,		$2,606 25
" 5,		10,000 00			2,000 00
" 11,		80 00		200 00	
" 14,		365 00		200 00	
" 15,		1,000 00		1,015 00	
" 18,		78 00		1,776 60	
" 20,	E. A. R.	28,775 00		450 22	
" 24,		106 21		7,751 50	
				600 00	
				7,400 00	
				45 00	
					19,438 32
					24,044 57
			Balance,		16,443 87
		40,488 44			40,488 44
April 1,	To Balance,	16,443 87	April, By Cash,		284 85
		100 00			10,000 00
" 9,		1,200 00			200 00
" 11,		2,000 00			90 00
" 17,		170 00			1,100 00
" 18,		770 00			3,437 50
" 24,		314 00			40 00
" 28,	F. C. Y.	400 00			1,385 00
					494 25
		21,397 87			2,077 50
" 30,	Hayward,	460 16			
					19,109 10
			Balance,		2,748 93
		21,858 03			21,858 03
May 1,	To Balance,	2,748 93	May, By Cash,		1,687 50
" 1,	" Cash,	875 00			673 17
" 19,		600 00			675 22
" 31,		5,000 00			150 00
					3,185 89
			Balance,		6,038 04
		9,223 93			9,223 93
June 1,	To Balance,	6,038 04	June, by Cash,		3,000 00
" 6,		100 00			1,720 47
" 4,	E. R.	3,181 50			882 66
" 21,		230 00			2,195 50
					7,798 63
			Balance,		1,750 91
		9,549 54			9,549 54

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July 1, To Balance,	$1,750 91	July, By Cash,	$2,650 00
" 1,	941 50		200 00
" 15,	935 26		2,850 00
			777 67
	3,627 67		3,627 67
August 1, To Balance,	777 67	August, By Cash,	1,700 00
" 16,	100 00	Balance,	2,343 34
" 18,	2,350 67		
" 19,	600 00		
" 23,	84 00		
	81 00		
" 25,	50 00		
	4,043 34		4,043 34
September 1, To Balance,	2,343 34	September, By Cash,	2,343 34
" 6,	1,555 48		300 00
	64 38		1,300 00
			3,943 34
		Balance,	19 86
	3,963 29		3,963 20
October 1, To Balance,	19 86	November, By Cash,	1,187 20
" 1, G. W. D.	3,000 00		80 00
November 20,	5,924 13		90 00
October 4,	3,702 49		
" 25,	138 00		1,357 20
" 20,	875 00	Balance,	14,006 28
" 29,	1,704 00		
	15,363 48		15,363 48
December 1, To Balance,	14,006 28	December, By Cash,	6,164 00
" 3, Cash,	600 00		351 06
" 10,	220 00		1,656 25
" 10,	1,100 00		4,625 00
" 31,	150 00		3,000 00
" 18,	3,000 00		15,796 31
		Balance,	3,279 97
	19,076 28		19,076 28
1852.		1852.	
January 1, To Balance,	3,279 97	January, By Cash,	6,400 00
	566 00		
	3,000 00	Balance,	445 97
	6,845 97		6,845 97

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February 1, To Balance,		$445 97	March, By Cash,		$400 00
March 1,		1,307 30			320 87
" 20,		720 80			66 14
					600 00
					425 00
					1,812 01
			Balance,		662 06
		2,474 07			2,474 07
April 1, To Balance,		662 06	April, By Cash,		450 00
" 2,		130 00			791 02
" 6,		450 00			45 45
" 17,		1,379 00			800 00
					2,086 47
			Balance,		534 59
		2,621 06			2,621 06
May 1, To Balance,		534 59	May, By Cash,		909 45
" 8,		3,062 00			750 00
" 10,		875 00			350 12
" 20,		858 00			3,090 00
" 20,		575 42			50 00
" 20,		302 00			5,149 57
			Balance,		1,057 44
		6,207 01			6,207 01
June 1, To Balance,		1,057 44			
" 8,		1,518 00	June, By Cash,		1,800 00
" 8,		220 00		168 00	
" 14,		189 60		203 00	
" 20,		1,000 00		500 00	
				1,018 00	
					3,689 00
			Balance,		296 04
		3,985 04			3,985 04
			July, By Cash,		90
			Balance,		556 04
July 1, To Balance,		296 04			646 04
" 27,		350 00			
		646 04			
August 1, To Balance,		5 04	August, By Cash,	19 00	1,767 36
" 4,		1,504 32		1,748 36	178 36
" 4,		104 00			
Sept. 15,		220 00	September,	37 00	1,945 36
" 30,		120 00		141 00	559 00
		2,504 36			2,504 36

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October 1	To Balance,	$559 00	October, By Cash,	$6,000 00
" 25,		19,647 00		6,025 00
" 27,		960 00		
" 28,		616 00		12,025 00
		365 02	Balance,	10,122 02
		22,147 02		22,147 02
November 1,	To Balance,	10,122 02	November, By Cash,	1,834 62
" 2,		172 00		45 00
" 3,		875 00		280 00
" 5,		800 00		1,521 00
" 16,		200 00		
		280 00		3,680 66
			Balance,	8,768 36
		12,449 02		12,449 02
December 1	To Balance,	8,768 36	December, By Cash,	5,000 00
" 2,		500 00		1,010 10
" 4,		5,340 11		3,186 63
" 8,		220 00		1,055 00
17,		150 00		
" 17,		300 00		10,251 63
" 4,	I. E. R.	90 00	Balance,	5,116 84
		15,368 47		15,368 47
1853.			1853.	
January 1,	To Balance,	5,116 84		200 00
" 3,		200 00		201 00
" 7,		125 00		64 75
" 10,		104 00		300 75
" 11,		822 50		3,000 00
" 12,		240 00		3,000 00
" 13,		360 00		240 00
" 23,		401 00		64 50
				7,071 00
			Balance,	298 34
		7,369 34		7,369 34
February 1,	To lance	298 34	February 1, By Cash,	210 00
				100 00
" 16,		758 65		401 25
" 21,		80 00		
				711 25
			Balance,	425 74
		1,136 99		1,136 99

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March	1, To Balance	$425 74	March, By Cash,		$582 25
"	8,	428 30			30 00
"	8,	260 00			138 00
"	14,	141 54			200 00
"	18,	100 60			640 75
"	19,	80 00			173 25
"	22,	1,000 00			
"	29,	400 00			1,764 25
"	30,	1,000 00		Balance,	2,071 33
		3,835 58			3,835 58
April	1, To Balance	2,071 33	April, By Cash,		50 00
"	5,	145 00			597 50
"	8,	480 00			
"	11,	273 60			647 50
"	12,	150 00		Balance,	3,787 43
"	22,	350 00			
"	1, A. P.	90 00			
		3,559 93			
"	31, Coupons,	875 00			
		4,434 93			4,434 93
May	1, To Balance,	3,787 43	May, By Cash,		524 49
"	2,	800 00			102 43
"	3,	149 50			3,460 00
"	6,	200 00			1,152 00
"	7,	500 00			435 00
"	9,	100 00			
"	11,	1,000 00			5,673 92
"	13,	100 00		Balance,	3,591 01
"	14,	1,000 00			
"	18,	1,628 00			
		9,264 93			9,264 93
June	1, To Balance,	3,591 01	June, By Cash,		1,735 00
"	8,	100 00			100 00
"	10,	135 00			
"	28,	150 00			1,835 00
				Balance,	2,141 01
		3,976 01			3,976 01
July	1, To Balance,	2,141 01	July, By Cash,		349 46
"	12,	996 00			25 75
"	25,	360 00			
"	25,	609 40			100 00
"	26,	1,891 00			
"	21, G. W. K.	500 00			475 21
				Balance,	6,022 20
		6,497 41			6,497 41

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August 1,	To Balance,	$6,022 20	August,	By Cash,	$832 50	
" 8,		666 00			1,000 00	2,797 50
" 10,		1,000 00			3,311 25	5,143 75
" 11,		1,146 40				
" 12,		120 00				7,941 25
" 25,		40 00		Balance,		1,053 35
		8,994 60				8,994 60
September 1,	To Balance,	1,053 35	September,	By Cash,		1,200 00
" 9,		200 00				100 00
" 14,		100 00				
" 24,		81 00				1,300 00
" 27,		200 00		Balance,		5,952 13
" 28,		100 00				
" 29,		2,848 75				
		591 25				
		5,174 35				
	F. B. H.	2,077 78				
		7,252 13				7,252 13
October 1,	To Balance,	5,952 13	October,	By Cash,		7,000 00
		1,290 00				2,500 00
" 4,		215 00				1,905 79
" 5,		429 25				
" 7,		538 75				11,405 75
" 8,		323 25		Balance,		1,172 13
" 12,		1,506 25				
" 14,		323 25				
" 27,		600 00				
		11,177 88				
" 29,		400 00				
" 21,	G. W. K.	500 00				
" 29,		500 00				
		12,577 88				12,577 88
November 1,	To Balance,	1,172 13	November,	By Cash,		452 50
		1,000 00				455 00
" 3,		875 00				190 00
" 8,		546 00				452 50
		385 00				507 50
		455 00				2,256 42
		452 50				1,023 67
" 9,		452 50				
" 11,		190 50				5,337 59
" 21,		665 00		Balance,		2,396 04
" 26,		1,531 00				
		7,733 63				7,733 63

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December	1, To Balance,	$2,396 04	December, By Cash,		$2,000 00
		126 00			14 00
"	9,	182 40			9,795 00
"	28,	996 00			
		2,168 75			11,809 00
"	24,	9,795 00	Balance,		3,855 19
		15,664 19			$15,664 19

1854.			1864.		
January	1, To Balance,	3,855 19	January, By Cash,	1,545 00	
"	2,	1,854 00		309 00	
"	11,	991 48		3,145 00	
"	14,	3,145 00		5,000 00	
		528 45		100 00	10,099 00
		2,002 67			
		480 00	Balance,		4,252 59
		406 00			
		120 00			
		440 35			
		13,823 14			
		528 45			
		14,351 59			14,351 59

February	1, To Balance,	4,252 59	February, By Bal.		1,714 75
"	9,	100 00			2,000 00
"	28,	2,400 13			90 00
					500 00
					4,304 75
			Balance,		2,455 97
		6,760 72			6,760 72

March	1, To Balance,	2,455 97	March, By Cash,		3,260 00
		1,500 00			3,200 00
"	3,	1,233 71			1,700 00
"	1,	1,485 00			2,500 00
"	9,	1,635 75			2,523 33
"	16,	160 00			
"	9,	90 00			13,183 33
"	15,	2,448 75	Balance,		658 45
"	20,	1,243 37			
"	23,	300 00			
"	24,	789 73			
		499 50			
		13,841 78			13,841 78

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April 1, To Balance,	$658 45	April, By Cash,	$2,466 76		
" 3,	480 00		1,900 00		
" 14,	9,250 00		50 00		
" 28,	500 00		30 00		
" 29,	770 00		982 50		
			565 25		
			2,872 50	512 75	
			2,000 00	10,866 92	
				11,379 67	
		Balance,		278 78	
	11,658 45			11,658 45	
May 1, To Balance,	278 78	May, By Cash,		8,000 00	
	500 00	Balance,		2,481 86	
" 5,	250 00				
" 23,	5,334 33				
" 19,	2,618 75				
" 27,	1,500 00				
	10,481 86			10,481 86	
June 1, To Balance,	2,481 86	June, By Cash,		2,500 00	
" 2,	85 00			2,400 00	
" 23,	2,500 00			1,600 00	
	1,914 56				
				6,500 00	
		Balance,		481 42	
	6,981 42			6,981 42	
July 1, To Balance,	481 42	July, By Cash,	130 00		
" 10,	106 00		36 00		
" 18,	896 00				
" 25,	1,373 13		166 00	166 00	
	600 00	By Balance,		3,690 55	
	406 00				
	3,855 55			3,855 55	
August 1, To Balance,	3,690 55	August, By Cash,		700 00	
" 10,	100 00	By Balance,		9,253 95	
" 22,	599 40				
" 22,	3,564 00				
	7,953 95				
	2,000 00				
	9 953 95			9,593 95	

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September 1, To Balance,		$9,253 95	September, By Cash,	$7,000 00	
		250 00		2,000 00	
				250 00	
				60 00	
					9,310 00
			Balance,		193 95
		9,503 95			9,503 95
October 1, To Balance,		193 95	October, By Cash		92 28
" 5,		400 00			60 00
" 24,		2,000 00			2,050 00
" 25,		420 00			
" 26,		550 00			2,202 28
" 28,		524 50	Balance,		1,886 17
		4,088 45			4,088 45
November 1, To Balance,		1,886 17	November, By Cash,	2,830 50	
" 6,		500 00		100 00	
Coupons,		525 00			
" 14,		220 80		2,930 50	2,930 50
			Balance,		201 47
		3,131 97			3,131 97
December 1, To Balance,		210 47	December, By Cash,		175 00
" 11,		74 00	Balance,		849 37
" 16,		100 00			
" 27,		58 90			
" 29,		200 00			
		634 37			
" 30,		390 00			
		1,024 37			1,024 37
1855.			1855.		
January 1, To Balance,		849 37	January, By Cash,	600 00	
" 4,		584 00		240 00	
" 13,		600 00			
" 18,		902 25			840 00
" 22,		100 00	Balance,		10,689 49
" 24,		100 00			
" 29,		5,859 00			
" 29,		1,186 66			
" 30,		268 21			
		10,449 49			
" 31,		1,000 00			
		11,449 49			11,449 49
February 1, To Balance,		10,609 49	February, By Cash,		10,000 00
" 26,		50 00	Balance,		1,258 89
" 27,		599 00			
		11,258 89			11,258 89

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March	1, To Balance	$1,258 89	March, By Cash,	$836 00		
"	8,	172 55		189 00		
"	9,	1,100 00		200 00		
"	14,	1,485 00		647 59		
"	"	120 00		632 50		
"	24,	1,287 75			2,505 00	
			Balance,		2,919 19	
		5,424 19			5,424 19	
April	1, To Balance,	2,919 19	April, By Cash	835 00		
"	4, G. W. K.	142 78		1,506 75		
"	6,	900 00		603,75		
"	7,	400 00		96 00		
"	21,	296 25		652 50		
"	23,	2,468 75		652 50	622 50	
					4,346 50	
					4,969 00	
			Balance,		2,157 97	
		7,126 97			7,126 97	
May	1, To Balance,	2,157 97	May, By Cash,	652 50		
"	2,	525 00		326 25		
"	4,	15,007 50		168 75		
"	25,	344 50		10 25		
"	28,	250 00		5,000 00		
"	30,	600 00		5,030 00		
				867 50		
		18,934 97		5,000 00		
"	31,	2,400 00		1,285 00		
				40 00		
					17,880 25	
			Balance,		3,454 72	
		21,334 97			21,334 97	
June	1, To Balance,	3,454 72	June, By Cash	750 00		
"	2,	275 00		652 50		
"	27,	53 76		1,305 00		
				672 50		
		3,783 48		403 50		
	Balance	02				
		3,783 50			3,783 50	
July	3, To Cash,	288 00	July, By Balance,			02
"	6,	5,895 00		27 84		
"	9,	396 00		1,000 00		
"	11,	1,500 00		100 00		
"	12,	600 00		587 25		
Amount carried forward,		8,679 00	*Amt. carried forward,*	1,715 09		

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Amount brought forward,		$8,679 00	*Amt. brght. forward,*	$1,715 09	
July 14, To Cash,		1,470 44	July, By Balance,	391 50	
" 23,		212 50		2,955 50	
" 25,		330 00		316 25	
" 26,		268 21		75 00	
" "		200 00		150 00	
				50 00	
		11,160 15		5,000 00	
" 31,		1,000 00			10,653 34
			Balance,		1,506 71
		12,160 15			12,160 15
August 1, To Balance,		1,506 79	August, By Cash,		551 00
" 4,		173 00			25 00
" 25,		348 33			577 50
" 31,		599 00			
					1,153 50
			Baiance,		1,474 02
		2,627 52			2,627 52
September, 1, To Balance,		1,474 02	September, By Cash,		662 50
" 19,		160 00			672 50
" 27,		1,000 00			
					1,335 00
			Balance,		1,299 02
		2,634 02			2,634 02
October 1, To Balance,		1,299 02	October, By Cash,		5,000 00
" 5,		4,111 17			1,000 00
" 10,		320 00			1,591 33
" 9,		300 00			7,789 33
" 11,		150 00			4,797 50
" 20,		545 00			
" 23,		1,485 00			20,178 16
" 18,	M. P. D.	10,305 00	Balance,		1,337 53
" 20,	J. A. M.	3,000 00			
		21,515 69			21,515 69
November 1, To Balance,		1,337 53	November, By Cash,		2,849 73
" 3,		7,536 83			8,089 52
" 10,		260 87			1,000 00
" 15,		184 80			5,634 00
" 19,		5,000 90			35 25
" 20,		1,000 00			
		2,023 50			17,608 50
" 21,		100 00	Balance,		940 03
" 26,		105 00			
		18,548 53			18,548 53

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December	1, To Balance,	$940 03	December, By Cash,		$500 00
	Coup.	500 00			250 00
"	5,	100 00			500 00
"	8,	500 00			394 00
"	10,	800 00			150 00
"	11,	500 00			788 00
"	11,	100 00			474 06
"	15,	500 00			1,155 75
"	20,	300 00			
		4,240 03			4,211 81
		5,967 00			5,995 22
		10,207 03			$10,207 03
1856.			1856.		
January	1, To Balance,	5,995 22	January	1, By Cash,	3,813 75
"	1,	288 00			1,228 50
"	3,	396 00			94 50
"	3,	94 00			150 00
"	4,	3,813 75			100 00
"	11,	268 21			150 00
"	17,	1,289 35			166 00
		600 00			1,494 00
"	22,	300 00			1,655 00
"	23,	185 00			822 50
"	24,	136 69			1,480 50
"	25,	1,228 00			2,056 25
"	26,	200 00			13,211 00
"	30,	3,536 75			236 25
					13,447 25
				Balance,	4,883 72
		18,330 97			18,330 97
February	1, To Balance,	4,883 72	February, By Cash,	230 00	
"	4, Coupons,	100 00		2,820 00	241 25
"	12,	3,984 08		705 00	627 50
"	8, Span. Inden,	100 39		622 50	482 00
"	16,	300 00		337 75	3,000 00
"	27,	1,500 00		367 50	367 50
					5,082 75
				Balance,	1,066 69
		10,868 19			10,868 19
March	1, To Balance,	1,066 69	March, By Cash,		1,245 00
	Coupons,	1,400 00			540 85
"	3,	569 40			612 50
Amount carried forward,		3,036 09	*Amount carried forward,*		2,398 35

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Amount brought forward,			$3,036 09	*Amount brought forward,*			$2,398 35
"	5.		540 85				1,245 00
"	11,		3,008 00				2,081 25
"	18,		2,081 25				1,100 00
"	20,		3,810 50				1,804 50
"	24,	M. B.	5,000 00				551 25
"	25,		160 00				1,852 50
"	28,		2,584 62				2,584 62
							2,530 60
							16,148 07
					Balance,		4,103 24
			20,251 31				20,251 31
April	1,	To Balance,	4,103 24	April,	By Cash,		175 00
"	3,	Coupons,	130 00				126 53
"	1,	S. A. K.	672 00				4,317 00
"	4,		3,000 00				7,695 00
			5,000 00				1,400 00
"	9,	G. W. K.	500 00				550 46
"	14,		360 00				2,822 13
"	22,	D. H.	1,000 00				17,086 12
			2,700 00		Balance,		379 12
			17,465 24				17,465 24
May	1,	To Balance,	379 12	May,	By Cash,		8,175 93
"	6,	J. C. H.	8,500 00				650 00
"	7,		394 50				4,834 37
"	9,		150 00				1,930 00
"	22,		525 00				482 50
"	23,	F. Holo.	4,000 00				65 48
"	24,		2,000 00				16,138 28
"	24,		532 00				
"	30,		75 00		Balance,		417 34
			16,555 62				16,555 62
June	1,	To Balance,	417 34	June,	By Cash,		150 00
"	2,	Coupons,	213 00				523 25
"	19,		1,500 00				173 25
					Balance,		1,457 09
			2,130 34				2,130 34
July	1,	To Balance,	1,457 90	July,	By Cash,		5,786 50
"	2,	Coupons,	5,973 00				4,846 87
"	2,	N. B. D.	5,000 00				25 01
"	3,		100 00				982 00
"	7,		288 00				3,366 56
Amount carried forward,			12,818 90	*Amount carried forward,*			15,006 94

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Amount brought forward.		$12,818 90	*Amount brought forward.*		$15,006 04
July 8,		120 00			2,000 00
" 9,		396 00			3,500 00
" 10,		360 00			20,506 94
" 15,		1,474 15	Balance,		684 99
		84 00			
		200 00			
		3,300 00			
	G. A. K,	1,000 00			
		1.000 00			
" 19,		130 00			
" 21,		100 00			
" 21,		209 69			
		21,191 93			21,191 93
August 1,	To Balance,	684 99	August,	By Cash,	2,885 63
" 12,	Coupons,	165 83			75 00
		2,079 00			46 75
		84 00			3,007 38
		268 21		Balance,	274 65
		3,282 03			3,282 03
September 1,	To Balance,	274 65	September,	By Cash,	2,885 63
" 3,	C. A. G.	125 00			75 00
" 18,		160 00			46 75
" 18,		158 67			3,007 38
		1,900 00		Balance,	274 65
		2,618 32			2,618 32
October 1,	To Balance,	103 28	October,	By Cash,	726 20
" 11,	Cash,	917 00			1,903 80
" "	D. C. H.	480 00			60 31
		4,500 00			908 00
		8,000 00			131 00
" 14,		320 00			567 50
" 16,		462 00			7,654 34
		720 00			1,908 50
23,		192 00			400 00
		1,500 00			1,439 60
					959 33
					16,657 98
				Balance,	536 30
		17,194 28			17,194 28

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November	1,	To Balance,		$536 30	November,	By Cash,	$7,620 00
		Cash,		1,500 00			7,668 34
"	3,			394 50			539 42
"	4,			200 00			5,000 00
"	5,	L. S.		5,000 00			963 03
		S. A. E.		4,500 00			3,137 50
				4,000 00			
"	9,	D. C. H.		5,000 00			24,928 29
"	15,			228 75		Balance,	3,151 18
"	17,	S. W. King,		200 00			
"	19,			812 42			
"	22,			215 00			
"	29,	C. & S.		2,992 50			
"	24,	D. C. H.		2,500 00			
				28,079 47			28,079 47
December	1,	To Balance,		3,151 18	December	1, By Cash,	2,847 50
		Cold.		602 00			1,902 05
"	5,			115 00			2,7— —
"	11,			150 00			
"	26,			2,700 00			6,639 55
						Balance,	78 63
				6,718 18			6,718 18
1857.					1857.		
January,	1,	To Balance,		$78 63	January,	By Cash,	$300 00
				3,823 00			5,180 87
"	5,			6,000 00			400 00
"	6,			1,259 21			6,093 83
"	7,			84 00		84 25	
"	10,			1,800 00		100 00	
"	14,			103 25		9,542 50	
				13,143 09		175 00	
"	15,	Cash, B. W.		3,500 00			9,901 75
"	22,	M. & Co.		5,500 00			
"	22,			100 00			21,876 45
						Balance,	366 64
				22,243 09			22,243 09
February,	1,	To Balance,		366 64	February,	By Cash,	100 00
"	3,			100 00			241 50
"	4,			1,000 00			3,817 00
"	16,			3,000 00			240 00
"	26,			500 00			
							4,498 50
						Balance,	568 14
				4,966 64			4,966 64

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March,	1,	To Balance,		$568 14	March,	By Cash,	$1,000 00
"	5,		C. Y.	1,500 00			40 00
				630 53			2,467 83
"	9,			268 27			240 00
"	13,			160 00			26 24
"	23,		S.	1,000 00			15 75
"	24,			50 00			
							3,789 82
						Balance,	387 06
				4,176 88			4,176 88
April	1,	To Balance,		387 06	April,	By Cash,	34 13
"	2,			441 47			2,391 96
"	6,			400 00			9,567 92
"	10,			360 00			200 00
"	14,			385 00			35 00
				600 00			2,878 00
"	22,			500 00			
"	14,		M. & Co.	8,000 00			15,107 01
"	17,		H. D. B.	2,000 00		Balance,	566 00
"	24,			100 00			
			F. E.	1,500 00			
			D.	1,000 00			
				15,673 53			15,673 53
May	1,	To Balance,		566 52	May,	By Cash,	6,493 22
			Cash,	394 50			13 12
"	4,			81 00			19,186 67
"	7,			1,500 00			
"	23,			100 00			25,693 01
"	25,			2,500 00		Balance,	2,846 61
"	9,			8,000 00			
"	11,		A. D.	8,000 00			
				2,397 60			
"	16,		H. E. H.	2,000 00			
			D. C. H.	3,000 00			
				28,539 62			28,539 62
June,	1,	To Balance,		2,846 61	June,	By Cash,	2,903 35
"	2,		Cash,	1,360 00			4,863 34
"	3,			602 00			3,465 07
"	5,			100 00			161 00
"	6,			3,060 00			
"	12,			150 00			11,392 76
"	15,			120 00		Balance,	360 85
"	16,			2,000 00			
				100 00			
				130 00			
				1,200 00			
				145 00			
				11,753 61			11,753 61

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July	1,	To Balance,	$360 85	July, By Cash,		$70 00
"	2,		100 00			248 75
		Cash,	132 00			100 00
"	3,		594 00			12,438 30
"	6,		243 00			37 12
"	8,		1,434 97			8,297 04
"	10,		600 00			6,298 06
"	20,		1,320 00			50 00
"	22,		84 00			
"	8,	W. D.	10,000 00			27,539 27
"	24,	S. B. & S.	6,394 37		Balance,	223 92
"	28,	S. B.	6,500 00			
			27,763 19			27,763 19
August	1,	To Balance,	223 92	August, By Cash,		47 50
"	3.	Cash,	100 00			4,014 70
"	11,		100 00			93 00
"	13,		100 00			
"	20,		100 00			4,155 20
			4,000 00			468 72
			4,623 92			4,623 92
September	1,	To Balance,	468 72	September, By Cash,		3,285 41
"	4,	Cold. D. & Co.	2,960 00			3,387 34
"	8,		98 00			17 94
"	9,		150 00			
			2,600 00			6,690 69
"	10,		200 00		Balance,	166 03
"	14,		220 00			
"	25,		110 00			
			50 00			
			6,856 72			6,856 72
October	1,	To Balance,	166 03	October, By Cash,		349 33
			500 00			70 00
"	3,		500 00			5,085 00
"	5,		100 00			4,019 21
"	3,	W. B. & D.	1,141 61			1,100 00
"	5,		1,800 00			3,634 00
"	6,		120 00			1,702 81
"	8,		223 20			1,932 00
		W. & Co.	5,000 00			
"	12,		150 00			17,892 54
"	14,		720 00			300 00
"	"		492 00			
"	15,		3,560 00			
			14,172 84			18,192 54

62

November	1,	To Balance,	$3,388 68	November 1, By Cash		$3,413 66
"	3,		50 00			14,574 54
"	9,	B. B.	1,169 81			5,144 24
"	14,	W. D.	20,000 00			50 00
"	18,	B. M.	5,000 00			180 06
"	20,		394 50			
"	24,		100 39			23,362 44
"	28,		58 28	Balance,		8,583 71
"	30,	L. & U.	747 89			
			39,909 55			
			1,936 60			
			31,946 15			31,946 15
December	1,	To Balance,	8,583 71	December, By Cash,		3,695 46
"	3,		2,250 00			4,545 00
"	17,		1,000 00			15 00
"	28,		600 00			2,411 11
						10,666 57
				Balance,		1,767 14
			12,433 71			12,433 71
1858.				1858.		
January	1,	To Balance,	1,767 14	January, By Cash,	100 00	
"	2,		5,889 00		9,110 33	
"	5,		1,000 00		9,593 33	
			792 00		4,796 67	
"	6,		213 00		202 40	
"	7,		1,246 46		100 00	
"	11,	D.	13,000 00		5,030 55	
"	12,		480 00			28,933 28
"	13,		999 00	Balance,		3,101 47
"	18,		1,848 15			
"	20,		2,000 00			
"	29,		600 00			
			29,834 75			
		D. H.	2,500 00			
			32,334 75			32,334 75
February	1,	To Balance,	3,101 47	February 1, By Cash,		2,404 69
"	2,		8,111 42			4 03
"	3,		100 00			11,484 00
		J. H. D.	9,066 00			1,350 00
"	23,		6,489 00			5,337 33
"	6,	N. S.	1,275 00			365 00
"	23,		3,000 00			2,411 04
			25,142 89			23,356 09
"	27,	C. M. & Co.	2,106 88	Balance,		3,893 68
			27,249 77			27,249 77

63

March 1,	To Balance,		$3,893 68	March, By Cash,	$4,045 87
			200 00		3,640 00
" 4,			268 21		1,620 00
" 2,		P. C.	260 21		6,962 50
" 12,			600 00		
" 9,			2,000 00		16,268 37
" 19,		H. P.	2,224 98	Balance,	169 21
			4,000 00		
			2,990 50		
			16,437 58		16,437 58
April 1,	To Balance,		169 21	April, By Cash,	3,000 00
			1,193 50		2,009 67
" 5,			320 00		4,104 67
" 12,		S.	360 00		300 00
" 7,		H.	3,335 85		9,745 83
" 8,		H.	1,563 16		3,000 00
" 9,			5,403 60		13,381 82
" 10,		H.	2,568 74		
		S.	2,985 97		35,451 99
		U.	6,000 00		11,645 00
" 16,		B.	4,000 00		
" 17,			770 00		47,096 99
			1,200 00	Balance,	2,640 19
" 28,			1,000 00		
" 21,			3,000 00		
" 23,		C. P. M.	1,693 04		
" 24,		S. B.	4,000 00		
" 26,		H. P.	2,442 13		
" 28,			3,500 00		
		J. S.	3,000 00		
			48 505 20		
" 29,			100 00		
			1,131 98		
			49 737 18		49,737 18
May 1,	To Balance		2,640 19	May, By Cash,	4,652 81
" 10,			50 00		1,751 35
" 4,		M. & Co.	250 00		1,962 50
" 5,		P. S. & Co.	963 06		650 00
" 8,		J. S. & Co.	1 183 70		2,412 50
" 11,			2,000 00		
" 12,			394 50		11,429 16
		C. & S. M.	168 00	Balance,	88 30
		S. S.	725 50		
			642 51		
		B. B. & Co.	2,500 00		
			11,517 46		11,517 46

64

June	1,	To Balance,	$88 30	June,	By Cash,	$852 50
			165 00			75 00
"	3,		806 00			350 00
"	9,	A. H.	4,500 00			
"	27,	E. N. & R.	1,690 91			1,277 50
"	26,	S. W. & B.	1,300 00		Balance,	7,272 71
			8,550 21			8,550 21
July	1,	To Balance,	7,272 71	July,	By Cash,	100 00
"	2,		693 00			5,845 00
			100 00			1,430 00
"	6,		1,461 80			54 00
"	12,		84 00			4,312 50
"	13,		480 00			2,923 75
			84 00			14,173 65
			2,397 81			1,212 75
"	15,		499 45			1,505 00
"	15,		5,889 00			6,020 00
"	15,		124 00			
"	23,		1,509 50			37,576 65
"	3,	W. M.	213 00			2,760 00
			2,778 70			
"	15,	P. H.	5,000 00			40,336 65
		M. & M.	5,000 00		Balance,	5,703 71
		" "	5,000 00			
"	19,	W. M. & Co.	719 09			
"	22,	J. B.	1,474 25			
"	31,		2,760 00			
			43,540 36			
			2,500 00			
			46,040 36			46,040 36
August	1,	To Balance,	5,703 71	August,	By Cash,	2,208 00
"	5,		180 00			2,760 00
"	19,		1,700 00			348 72
"	9,		2,760 00			1,700 00
			5,000 00			3,387 50
		S. B.	2,208 00			1,200 00
		A. S.	4,459 40			4,914 44
			1,360 56			5,763 90
"	28,	H. S.	2,500 00			
						22,282 56
						3,589 11
			25,871 67			25,871 67

65

September	1,	To Balance,	$3,589 11	September,	By Cash,	$1,458 06
"	8,		100 00			100 00
		H.	5,000 00			90 72
"	14,		794 00			4,860 97
"	15,		435 00			50 00
"	25,	E. D. P.	5,470 00			250 00
						500 00
						1,485 00
						995 00
						9,789 75
					Balance,	1,101 61
						4,192 75
			15,084 11			15,084 11
October	1,	To Balance	1,101 61	October,	By Cash	10,000 00
"	4,		3,090 00			630 00
			1,193 50			1,750 00
			268 21			2,001 33
"	8,		240 00			88 50
"	13,		1,200 00			291 61
			770 00			60 00
"	22,		480 00			300 00
			1,500 00			892 50
"	5,	J. M. G.	3,741 69			
"	12,	M. M. S. & Co.	1,792 42			16,043 94
"	15,	J. C. H. & Co.	4,757 89		Balance,	31,691 38
"	20,		12,000 00			
"	27,	G. H.	10,000 00			
"	29,		5,600 00			
			47,735 32			47,735 32
November	1,	To Balance,	31,691 38	November,	By Cash,	3,000 00
			50 00			4,857 92
"	3,		102 00			1,945 92
"	6,		520 00			635 00
"	12,		368 00			2,710 00
"	17,	E. U. M.	7,000 00			5,502 97
						12,095 46
						30,747 27
					Balance,	8,990 11
			39,737 38			39,737 38

66

December 1,	To Balance,		$8,990 11	By Cash,		$2,425 00
" 2,			602 00			140 00
" 3,			12,000 00			100 00
" 11,			100 00			630 00
" 27,			100 00			2,617 60
" 16,	S. S. & Co.		5,000 00			872 50
						3,540 22
					Balance,	12,625 00
						32 00
						3,036 00
						26,068 22
					Balance,	823 89
			26,892 11			26,892 11

1859.				1859.		
January 1,	To Balance,		823 89	January, By Cash,		5,915 00
" 3,			206 40			150 00
			5,889 00			3,180 00
" 5,			394 00			300 00
" 10,			100 00			1,000 00
			320 00			5,994 00
			1,398 40			100 00
			300 00			4,000 00
" 11,			600 00			5 00
			140 00		3,878 67	
" 15,			200 00		25,639 00	
			1,280 17			29,517 67
" 19,			1,075 50		Balance,	9,907 20
			1,741 77			
" 26,			500 00			
" 12,	H. S.		500 00			
			6,000 00			
" 17,	"		3,000 00			
" 25,	E. K.		14,555 74			
			39,424 87			39,424 87

February 1,	To Balance,		2,500 00	February, By Cash,		17,366 25
			9,907 29		Balance,	12,120 45
" 7,			520 00			
" 25,			1,132 20			
" 3,			7,827 30			
" 8,			1,200 00			
" 15,	H. W. B.		4,500 00			
" 23,			3,000 00			
	J. C. & Co.		1,400 00			
			29,486 70			29,486 70

67

March	1,	To Balance,	$12,120 45	March, By Cash,	$1,457 25	
"	2,		268 21		3,204 85	
"	9,		1,200 00		3,704 37	
"	11,		3,000 00		3,000 00	
"	12,		101 00		5,000 00	
"	14,		100 00		1,200 00	
			1,200 00		5,000 00	
"	22,		160 00		1,365 00	
			18,149 66			$23,931 47
"	3,	H. D. K.	1,500 00	Balance,		7,576 09
"	12,	S. A. N. & Co.	5,000 00			
"	29,		6,759 90			
			68 00			
			31,507 56			31,507 56

April,	1,	To Balance,	7,576 09	April, By Cash,	7,000 00	
			500 00		2,000 00	
			1,193 50		500 00	
"	4,		100 00		100 00	
			500 00		750 00	
"	8,		100 00		4,365 00	
"	11,		1,200 00		156 00	
"	12,		141 75			5,000 00
			246 25			14,871 00
			7,015 17			
"	14,		1,155 00			19,871 00
			1,800 00	Balance,		3,656 76
"	28,		2,000 00			
			23,527 76			23,527 76

May,	1,	To Balance,	3,656 76	May, By Cash,	78 00	
"	2,		100 00		5,824 30	
			526 00		2,045 00	
"	9,		100 00		10,168 90	1,875 00
"	3,	J. G. & Co.	5,634 25		9,712 50	
"	7,	O. A. & Son,	5,000 00		1,576 00	
"	12,		70 00		1,639 48	
			106 00			36,044 38
"	14,		390 00	Balance,		3,418 21
			6,722 89			
"	16,		7,207 67			
"	17,		100 00			
			299 70			
"	19,		2,045 00			
"	20,	W. H.	4,380 22			
			36,337 59			36,337 59

68

June, 1,	To Balance,		$3,418 21	June, By Cash,	$413 00	
" 6,			413 00		1,644 78	
			100 00		103 25	
" 9,		J. G. & Co.	234 96		1,794 66	
" 3,		S. C. & Son,	500 00		100 00	
" 7,			602 00		3,000 00	
			153 25		4,000 00	
" 14,			500 00		1,005 00	
			302 51			11,960 69
" 16,			108 00	Balance,		2,722 24
" 17,			96 00			
" 19,			3,000 00			
			1,800 00			
" 20,		M. W.	1,005 00			
			12,182 93			
			2,500 00			
			14,682 93			14,682 93

July 1,	To Balance,		2,722 24	July, By Cash,		4,339 87
			194 00			2,000 00
			400 00			300 00
			606 00			50 00
" 2,			284 00			46 40
" 5,			400 00			20 45
			270 00			300 00
			594 00			2,000 00
			250 00			59 47
" 9,			2,150 00			100 00
" 14,			200 00			1,622 25
" 18,			4,016 00			14,592 50
			1,429 13			626 25
			200 00			
" 16,			120 00			26,007 19
			250 00	Balance,		15,352 12
" 21,			5,904 70			
			100 00			
			600 00			
" 25,			3,090 00			
			1,000 00			
" 18,		W. G. S.	1,652 37			
" 28,		H. D. H.	4,000 00			
" 29,		J. M. A.	9,274 50			
			39,706 94			
" 5,		W. G. S.	1,652 37			
			41,359 31			41,359 31

69

August	1,	To Balance,		$15,352 12	August,	By Cash,	$9,774 23
				210 00			9,329 68
				300 00			3,926 09
				500 00			23,030 00
"	2,			100 00		Balance,	7,785 50
				640 00			
"	4,			120 00			
				150 00			
				100 00			
"	11,			100 00			
"	15,			518 00			
"	16,			25 38			
				18,115 50			
"	1,	D. C. H.		2,500 00			
"	4,	U. H.		3,800 00			
"	20,	U. G. S.		1,600 00			
"	24,	H. A. M.		1,500 00			
"	29,	J. A. H.		3,300 00			
				30,815 50			30,815 50
September	1,	To Balance,		7,785 50	September,	By Cash,	12 25
"	3,			87 00			105 25
"	7,			268 21			125 00
"	10,			100 00			6,000 00
"	13,			1,200 00			2,908 50
			Col.	10,305 00			6,064 88
"	15,			6,000 00			9,695 00
				160 00			10,421 72
"	20,			2,239 04			35,332 60
"	24,		J. S. P.	8,126 09		Balance,	938 24
				36,270 84			36,270 84
October	1,	To Balance,		938 24	October,	By Cash,	120 00
"	6,			420 00			50 00
				500 00			27 04
"	8,			1,193 50			100 00
				800 00			100 42
"	13,		S. Judens,	158 72			1,202 50
"	14,			1,200 00			663 75
"	22,			480 00			1,254 76
"	24,			1,254 76			300 00
				75 00			3,818 47
				770 00			9,471 75
"	27,			1,000 00			
				500 00			
				9,290 22			
"	28,		H. N. & Co.	4,000 00			
				13,290 22			13,290 22

70

November 1,	To Balance,		$9,471 75	November,	By Cash,		$ 665 00
			100 00				16,619 97
		A.	526 00		Balance,		19,715 58
" 11,			165 00				
" 16,			100 00				
			536 00				
" 21,		M. G. S.	1,662 00				
		G. S.	10,000 00				
" 28,		H. W. B.	3,500 00				
			25,860 75				
" 1,		C. A.	5,139 80				
" 4,		S. L.	3,000 00				
" 6,		N. G.	3,000 00				
			37,000 55				37,000 55
December 1,	To Balance,		19,715 58	December,	By Cash,	3,000 00	
			75 50			20,032 86	
			602 00			1,014 50	
" 5,			1,521 25			2,908 50	
			100 00			2,500 00	
" 1,		R. R. A.	89 50				29,455 86
" 3,			504 28		Balance,		742 55
" 6,		S. A. & Co.	4,500 00				
" 12,			400 00				
" 15,			100 00				
			100 00				
			60 00				
			100 00				
			232 80				
" 20,			1,647 50				
" 27,			450 00				
			30,198 41				30,198 41
1860.				1860.			
January 1,	To Balance,		742 55	January,	By Cash,	2,027 72	
" 3,			808 00			6,790 00	
			5,889 00			104 00	
			189 00			2,414 45	
			396 00			81 00	
			564 00			150 00	
" 5,			175 00			250 00	
			284 00			15,062 34	
" 7,			218 35			4,847 50	
" 10,			720 00				
" 16,			1,341 35				
" 16,			60 00				
			120 00				
Amount carried forward,			11,507 25	*Amount carried forward,*			31,727 01

January,		*Bro't forward,*	$11,507 25	January,	*Bro't forward,*		$31,727 01
"	9,	W. G. S.	1,479 62				4,342 50
"	10,		1,000 00				
"	19,	C. A.	15,000 00				
"	23,	J. C. H.	5,102 34				
"	26,	J. G. F.	471 22				
"	28,	W. M. B.	2,800 00				
"	30,	H. D. H.	4,500 00		Balance,		5,490 91
			41,560 42				41,560 42
February	1,	To Balance,	5,490 91	February,	by Cash,		
"	2,		1,020 00			1,020 00	
"	13		210 00			2,506 25	
"	13		100 00				3,526 25
"	"		640 00				
"	14,		100 00				
"	20,		111 00				
"	"	L. B. C. & Co.	3,204 00				
"	14,	P. S.	4,029 79				
"	22,		125 00				
"	25,		100 00				
"	21,	N. P.	2,088 39				
"	28,	S. T.	200 00		Balance,		13,892 86
			17,419 11				17,419 11
March	1,	To Balance,	13,892 86	March,	By Cash,		
"	2,		100 00			5,700 15	
"	6,		53 00			496 25	
"	14,		3,644 50			3,544 50	
"	17,		1,224 00			530 00	
			268 21			4,847 50	
			100 00			3,622 50	
"	24,		405 00			10,000 00	
						8,977 47	1,251 25
			19,687 57			25 00	15,046 58
"	3,	G. W. M.	531 27				37,747 37
"	13,	H. J. L.	858 30				
		E. H.	2,850 00				54,041 20
		B. P. Y.	1,371 44		Balance,		6,655 35
		N. H.	3,400 00				
		B. D.	595 69				
"	16,	D. & H.	3,000 00				
"	17,	C. M. K.	2,025 51				
		C. S.	240 99				
		N. W. M.	10,000 00				
"	19,	J. S. F.	3,280 80				
"	23,	L. G. S.	1,133 09				
		B. S. & Co.	3,000 00				
		J. S. S.	1,864 95				
		J. S.	1,090 69				
"	24,	B. H. & Co.	2,262 28				
		G. W. R.	672 10				
"	30,	G. N. C. & Co.	2,831 97				
			$60,696 55				$60,696 55

72 *Exhibit "B."—Schedule of the names and dates of certificates of stock.*

Cocheco Manufacturing Co.,	1 Share,	Certificate dated	May 14, 1846.
" "	" 1 "	" "	Jan. 5, 1847.
New England Glass Co.,	4 Shares,	" "	Oct. 16, 1858.
" " " "	3 "	" "	Nov. 1, 1859.
Amoskeag Manufacturing Co.,	1 Share,	" "	June 9, 1858.
" " "	1 "	" "	Oct. 6, 1858.
" " "	3 Shares,	" "	Feb. 15, 1859.
Laconia Company,	1 Share,	" "	July 25, 1860.
Great Falls Manufg. Co.,	15 Shares,	" "	Mar. 30, 1858.
" " " "	10 "	" "	July 7, 1858.
" " " "	25 "	" "	Aug. 14, 1858.
" " " "	31 "	" "	Sep. 28, 1858.
" " " "	20 "	" "	Nov. 4, 1858.
Lowell Manufacturing Co.,	2 "	" "	Oct. 2, 1858.
Saco Water Power Co.,	24 "	" "	Jan. 18, 1859.
Little Miami R. R. Co.,	80 "	" "	May 1, 1854.
" " " " "	1 Share,	" "	June 20, 1854.
" " " " "	16 Shares,	" "	Nov. 7, 1854.
Vt. and Canada R. R. Co.,	3 "	" "	May 4, 1855.
Bos. & Lowell R. R. Corp.,	3 "	" "	Dec. 11, 1858.
" " " "	4 "	" "	May 28, 1859.
" " " "	3 "	" "	Mar. 9, 1859.
Washington Ins. Co.,	15 "	" "	Apr. 12, 1859.
South Cove Corporation,	37 "	" "	Dec. 19, 1851.
" " "	12 "	" "	May 22, 1857.
United States Hotel,	30 "	" "	Aug. 7, 1850.
" " "	15 "	" "	June 11, 1855.
1 Certificate Webster annuity for $1000 transferred to W. J. Walker,			Mar. 13, 1860.
South Wharf Corp.,	446 Shares,	Certificate dated	Dec. 18, 1847.
" " "	200 "	" "	July 26, 1849.
Spanish Indemnity Certificate for $1239. 38 dated			Dec. 18, 1855.

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73 And on the ninth day of August the following replication was filed, namely:

Circuit court of the United States, district of Massachusetts.—May T., 1866.

ELIZA WALKER
vs.
JOSEPH S. BEAL *et al.*

The replication of Eliza Walker, plaintiff, to the answer of the defendants.

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will

be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

ELIZA WALKER,
By THAXTER & BARTLETT,
Her Solicitors.

(Filed Aug. 9, 1866.)

74 On the eighth day of October, A. D. 1866, the complainant, by leave of court, withdraws her replication and amends her bill as follows:

Circuit court of the United States, Massachusetts district.

ELIZA WALKER, *in eq.*,
vs.
JOSEPH S. BEAL *et al.*

And now the plaintiff, by leave of the court here, withdraws her replication and amends her bill as follows:

By adding on the 4th page, in the fifth line from the bottom, after the words "by her, as aforesaid," the following words, viz: "And your oratrix also delivered to the said William J. Walker the sum of one thousand dollars, which was her own sole and separate property, upon the same trust."

(Filed and allowed Oct. 8, 1866.)

75 This cause was thence continued to the October term of this court, A. D. 1866, when the following answer and replication were filed, namely:

United States circuit court, district of Massachusetts.

ELIZA H. WALKER
vs.
JOSEPH S. BEAL *et al.*, executors.

The answer of defendants to plaintiff's amended bill.

The defendants, for answer to said amended bill of complaint, say that they are ignorant whether the complainant delivered to the said William J. the sum of one thousand dollars, which was her sole and separate property, upon the same trusts as set forth in plaintiff's bill of complaint, and can, therefore, neither admit nor deny the same. But they deny that, if said money was delivered to the said William J., that the same was paid to him upon any trust. And they allege that if the sum so paid was paid to the said William J., as and in the manner set forth in the said bill of complaint, the money so paid became the sole property of the said William J., free and discharged of any trust whatever for the complainant; and that no claim, either at law or in equity, was created thereby against the said William J., in his lifetime, in favor of the complainant for any money so paid, or against his estate since his decease.

And these defendants, further answering upon information and belief, say, that within two months' time after the execution of the indenture and the separation referred to in the complainant's bill, the said William J. and the complainant became reconciled, and the said complainant returned to the house of the said William J., and the said William J. and the complainant thereafter, and until the month of June, 1860, a

period of fourteen years, cohabited and lived together as man and wife; and these defendants say, that if the agreement and indenture of separation of the same were ever valid, became, by such reconciliation and recohabitation, discharged and of no effect.

76 And, upon information and belief, these defendants, further answering, say that after the return of the complainant to the house of the said William J., and their reconciliation, as above stated, the said complainant gave up, waived, and surrendered to the said William J. all claim, if any she had, to the income of the property purporting to be conveyed by said indenture during the time of their so living together, saving and reserving only so much as might be needed and called for by her for private expenses, and any charitable objects she might wish to favor.

JOSEPH S. BEAL.
A. S. WHEELER.

B. F. THOMAS and
HENRY C. HUTCHINGS,
Solicitors for Respondents.

DISTRICT OF MASSACHUSETTS, *ss:*

OCT. 19th, A. D. 1866.—Then personally appeared the said Joseph S. Beal and A. S. Wheeler, and made oath that they have read the foregoing amended answer by them subscribed, and that they know the contents thereof; that the same are true so far as stated upon personal knowledge; and so far as stated upon information and belief, they believe them to be true.

Before me, E. MERWIN, *U. S. Com.*

(Filed October 19, 1866.)

76A *Replication.*

United States circuit court, Massachusetts district.

WALKER, *in eq.*, }
vs. }
BEAL *et al.* }

Now, upon the coming in of the answer to the amended bill, the plaintiff refiles the replication before filed by her.

By THAXTER & BARTLETT,
Her Solicitors.

And the following agreements are entered of record, namely:

77 United States circuit court, Massachusetts district.

WALKER, *in eq.*, }
vs. }
BEAL *et al.* }

It is agreed that during the month of April, after the execution of the trust indenture, Dr. Walker and his wife first came together.

BENJ. F. THOMAS, *for D'f'ts.*
S. BARTLETT, *for Pl'ff.*

(Filed October 3, 1866.)

United States circuit court, district of Massachusetts.—Oct. T., 1866.

WALKER, *in eq.*, }
vs. }
BEAL *et al.* }

It is agreed that the copy of the will of Dr. Walker, annexed to the

defendants' answer, is correct, and is made one of the exhibits in the cause; and further, that the copies of the inventories of the estate of Dr. Walker, filed in the probate courts of Rhode Island and of Massachusetts, shall be made exhibits in the cause, and that the testimony in the cause be now published.

THAXTER & BARTLETT, *for Compl't.*
HUTCHINS & WHEELER, *for Resp'ts.*

BOSTON, *Nov.* 19, 1866.

(Filed November 19, 1866.)

78 STATE OF RHODE ISLAND, &c.,
Newport, July 10, 1865.

NEWPORT, *ss:*

An inventory and appraisement of all the goods and chattels, rights and credits, which were of William J. Walker, late of said Newport, physician, deceased, as set forth to the undersigned by the executors of the will of said William.

20	shares	Amoskeag Manufacturing Co.,		$1,175	per share,	$23,500 00
208	"	Bates	"	145	"	30,160 00
51	"	Cocheco	"	510	"	26,010 00
151	"	Great Falls	"	180	"	27,180 00
30	"	Laconia	"	1,000	"	30,000 00
20	"	Manchester Print	"	1,425	"	28,500 00
23	"	Pepperill	"	1,000	"	23,000 00
12	"	York	"	1,150	"	13,800 00
12	"	Cape Cod Railroad	"	65	"	780 00
263	"	Concord "	"	55	"	14,465 00
446	"	Dighton & Somerset	"	40	"	17,840 00
116	"	Little Miami	"	56 50	"	6,556 00
1	share	" " bond for		1,000 91	"	910 00
2341	shares	Old Colony & Newport R. R. Co.		104	"	243,464 00
46		Ogdensburg bonds, (total par $34,100,)		95	"	32,395 00
443	shares	Vermont & Canada R. R. Co.		100	"	44,300 00
		Notes receivable in Suffolk Bank, Boston				57,000 00
36	shares	Water-power Co., $150 per share				5,400 00
309	"	South Cove Co., (including div.)				104,133 00
666	"	South wharf, (final dividend)				8,991 00
75		United States bonds, 5-20, $1,000 each				79,312 50
20	"	" " 6's of 81, $500 each				10,675 00
5	"	" " 7-30, (3 of $1,000 each, and 2 of $100 each)				3,200 00
1		Webster annuity certificate of $1,000, 65c				650 00
1		Spanish indemnity, $123,938 65				619 69
1		Vermont & Canada R. scrip of $2,142 80				1,713 60
1		Old Colony & Newport scrip, $52				52 00
		Cash on hand				20,392 07
		Total				$854,996 86

5-cent stamp.

GEORGE BOWEN,
CHARLES MIXTER,
FRANCIS B. PAKAM, JR.,
Appraisers.

Fees, $3 00.

79 COUNTY PROBATE, CITY OF NEWPORT,
Clerk's Office, July 17, 1865.

I certify the above is a true copy of the inventory rendered to this court on oath, by the executors of the will of William J. Walker, late of Newport, deceased, as appears of record in this office.

Attest:
(Signed) BENJAMIN B. HOWARD,
Probate Clerk.

(Copy.)

Inventory of the estate and effects of William J. Walker, late of Newport, in the State of Rhode Island, deceased, returned by Joseph S. Beal, A. S. Wheeler, and Benjamin Finch, to the court of probate for the county of Suffolk, in the State of Massachusetts.

REAL ESTATE.

4	dwelling-houses	in Genesee street, in Boston, $3,000	$12,000
4	"	" Oneida " " 2,800	11,200
3	"	" Cove st. Place, " 1,500	4,500
3	"	" Cove street, " 1,500	4,500
Farm	in	Townsend, Middlesex County	1,000
			$33,200

PERSONAL ESTATE

320	shares	Washington Mills	$170	$54,400
140	"	Everett Mills	140	19,600
120	"	Hamilton Woolen Company	325	39,000
10	"	Lowell Mfg. "	900	9,000
4	"	Lawrence Mfg. "	925	3,700
109	"	Essex "	92	10,028
20	"	New England Glass "	700	14,000
10	"	Merrimack Mfg. "	1,300	13,000
119	"	Mercantile Marine Ins. "	125	14,875
187	"	Neptune Ins. "	226	42,262
15	"	Washington Ins. "	150	2,250
193	"	Boston Ins. "	135	26,055
301	"	Northern R. R. "	82	24,682
71	"	Boston & Maine R. R. "	115	8,165
10	"	Boston & Lowell R. R. Co., in 500 each, or 495	99	4,950
210	"	Suffolk bond	116	24,360
198	"	United States Hotel Co	57	11,286
				$321,613

(Filed November 25, 1866.)

80

81 This cause was thence continued to the May term of this court, A. D. 1867, when the same was set down for hearing and fully heard.

The cause was thence continued to the October term of this court, A. D. 1867, when, on the second day of December, the following decree was entered, namely:

Circuit court of the United States, Mass. district.

ELIZA WALKER, *in equity*,
vs.
JOSEPH S. BEAL *et al.*

This cause came on to be heard upon the pleadings & proofs, & was argued by counsel; and the court, having maturely considered the same, do declare that the trusts alleged in the bill of complaint are shown to have been created as is therein stated; & that the same were equitably binding on the said testator in his lifetime, & upon his
82 estate in the hands of the respondents as the executors of his will within the State of Massachusetts; & that the respondents, in their said capacity, are equitably bound & obliged to account by reason of the same. And the court do therefore order & decree that this cause be referred to Charles B. Goodrich, esq'r, one of the masters in chancery of this court, to report what investments, if any, were made by the said testator of the trust funds specified in the said bill, & how, if at all, such investments have been changed, & what is the present condition thereof & what profits, if any, have been received therefrom, & what sums of money of the said trust funds do not appear to the master to have been so invested; & that the said master take an account of all said principal sums received by the said trustee, & all payments made by him; & that he make such allowances of interest thereon, (either compound or otherwise,) and for the compensation of the trustee, if any, for investment or care of the funds, as appear to him to be just and proper, & report to the court the facts respecting all such allowances.
And for the better taking of such accounts, that the said respond-
83 ents produce on oath before the master all such books, papers, and vouchers, as in any way touch the same, & which shall be required by the master, & attend before him to answer all such interrogatories as the master shall allow. And all further questions are reserved until the coming in of the master's report.

This cause was thence continued to the May term of this court, A. D. 1868, when, on the eighteenth day of May, the master made the following report, namely:

84

85 Circuit court of the United States, first circuit, district of Massachusetts.

ELIZA WALKER, complainant,
vs.
JOSEPH S. BEAL, ALEXANDER S. WHEELER,
respondents.

To the honorable the justices of the circuit court:

Report of the Master.

In pursuance of a decretal order of this honorable court, made in the above cause, I, the subscriber, one of the masters of this court, having been attended by counsel for the complainant and for the defendants, and having examined the evidence in chief in this cause which was produced before me, and taken the testimony of several witnesses pro-

duced before me, upon the matters directed to be inquired into by such order, and considered the same, I do report—

At the hearing before me, the defendants, in answer to an interrogatory proposed in behalf of the complainant, replied they had no books or accounts of their testator tending to show investments made by him. That all the books relating to the subject of inquiry which had come to their possession had been produced with their answer to the bill, and were in court.

The complainant introduced the testimony which had been taken by her in the cause, together with "the exhibits" produced by the defendants in their answer, which are hereby referred to.

The complainant offered certain evidence as follows:

And now the plaintiff proposes to offer evidence to the master to show—

86 First. That the late William J. Walker purchased the several shares of stock mentioned in the schedules from one to fifteen in number, (which the complainant had prepared, and which are marked No. 1 to 15, inclusive,) at the dates and prices therein stated, and took transfers thereof to himself.

Second. That the amount of dividends received by the said Walker upon said investments, up to April 4, 1866, the date of filing plaintiff's bill, and also the market value of each of said investments at said date, is correctly stated in said schedules, and shows the following profits upon said investments:

Lowell Man'g Co.,	Cost	$48,090 00	Profit	$10,060 00
Manchester Print Works,	"	7,015 00	"	20,345 00
Great Falls Man'g Co.,	"	23,431 50	"	20,911 50
Cocheco "	"	6,832 50	"	7,886 50
Laconia "	"	11,770 00	"	20,460 00
Amoskeag "	"	14,802 50	"	19,817 50
New England Glass Co.,	"	1,900 00	"	5,120 00
Mercantile Man'g Ins. Co.,	"	15,205 00	"	14,594 00
Suffolk Bank,	"	17,688 00	"	25,502 00
Vermont & Canada R. R.,	"	14,547 50	"	43,520 00
Northern R. R.,	"	22,229 00	"	26,876 00
Boston & Maine R. R.,	"	61,025 50	"	71,027 00
Old Colony R. R.,	"	78,900 00	"	322,704 00
		$323,436 50		$596,793 50

Third. And plaintiff will contend, among other things, that from the evidence in the cause as to the mode in which said Walker dealt with the trust funds, and from the character of the trust, he will, in equity, be held and charged as having invested each instalment of the trust fund paid to him in the purchase of the stocks equal to or exceeding such investment which was thus purchased by him first after the lapse of a reasonable time from the payments of said trust funds to him.

Fourth. The plaintiff also proposes to put in evidence the foregoing facts, to show that during the whole period while he was receiving

87 and holding the trust funds of the plaintiff for investment, he was investing money in the purchase of safe and profitable stocks, yielding semi-annual dividends.

The respondents objected to the admission of the testimony, and denied the supposed deductions therefrom.

Upon the proposition the master ruled as follows:

Evidence that the testator, during the time he was in the receipt of the money of the complainant, made investments in the purchase of stocks paying semi-annual dividends is competent—

First. To show that the testator might have invested the money so received by him.

Second. It is competent upon the inquiry, "whether the estate of the testator shall be charged with interest, and, if so charged, whether with or without rests."

Third. It is not competent or sufficient, upon the proof before me for the purpose, and as the basis upon which an account can be taken of the profits made by the testator from the investments which he may have made in his own name, in the manner set forth in the evidence offered.

(To this last ruling the complainant excepted.)

The facts upon which the ruling is made—

The testator deposited the money of the complainant in bank, in his own name, from which he drew for all purposes which required the use of money.

The balance of this account constantly varied by deposits and by withdrawals.

The fact that the testator made investments in the purchase of stocks, within a short time, say two or three weeks or two or three months, after he had received the money of the complainant, does not, without additional proof, show that her money, in whole or in part, was applied to such purchase, although the investment was equal in amount with or exceeded the sum received.

88 There is no implication of law or of fact upon which I can find that her money was so applied.

If some portion of it was possibly or probably so applied, I have no data, or certain means, from which to determine what proportion was so applied. It is a matter of uncertainty.

The proof offered in connection with the testimony before me is not admissible as the basis upon which to require or to state an account of the profits made by the testator in the purchase of the stocks mentioned.

Upon this ruling the counsel of the respondents conceded for the purpose of the hearing before me, that the testator Walker made investments during the time he was receiving the money of the complainant, in the purchase, from time to time, of the stocks mentioned in the schedules of the complainant, (among others,) at the dates and of the amounts therein stated, not conceding, but denying that any profits were made as therein stated.

The respondents introduced Edward Blake, who testified that he had had the charge of trust funds placed with him as trustee for investment for a period of twenty years.

The respondent, after this statement of the witness, proposed to him the following question: "What has been the result, as to the profits which were derived during the years from 1846 to 1860, from the investments of trust funds?"

The complainant objected to the question as incompetent and irrelevant to the issue.

The question was admitted by the master, subject to the objection.

The witness answered, "Investments in mortgages have produced gross six per cent., which is subject to commission and taxation."

Taxation during the years mentioned was some one per cent. Trustees charge five per cent. on the gross income.

The witness then testified that mortgages for five, fifteen, and twenty hundred dollars could not be so readily obtained or negotiated as mortgages for a larger sum, say for five thousand dollars and upwards;
89 that mortgages, upon an average, are taken for a period of five years; that in mortgages taken by himself the interest was payable semi-annually.

The respondent introduced Edward Bangs, who testified: "I have had charge of trust funds for fifteen years, and since eighteen hundred and fifty-three the gross income derived therefrom was six per cent., upon which a commission of five per cent. was charged.

Taxes upon the income were charged to the owner.

Formerly the tax was $8 00 upon $1,000; recently there has been a large increase, and as high as two per cent.

Trustees are prevented from taking mortgages for more than six per cent.

In mortgages taken by me the interest was payable semi-annually.

The respondents introduced Cyrus N. Hale, who testified he was and had been the secretary of the Massachusetts Hospital Life Office.

That this institution had paid to those who had made deposits therein dividends of five per cent. annually, from the year 1846 to 1851, inclusive; from 1852 to 1860, five and a half per cent.

That in addition to the dividends during the entire period, payments had been annually made to the stockholders of one-half of one per cent.

That it was the intention of the institution to divide annually to those entitled the entire net profits; that the investments of the institution were made in mortgages upon real estate and in railroad bonds, paying six per cent. interest.

"The testimony of the last two witnesses was received subject to objections by the complainant, similar to those made to the testimony of the previous witness."

I do further report the complainant left the house and residence of her husband in September, A. D. 1845.

That on the 24th of February, 1846, they executed the articles set forth in the bill Exhibit C. Shortly after their execution the testator gave to his wife, in addition to the property mentioned in the articles, the sum of one thousand dollars with which to support herself before she should be in the reception of an income from the trust property.

Prior to the execution of these articles, the husband had received property of the wife, which she derived from the estate of her father; whether it was real or personal does not appear.
90 The amount and value thereof, although considerable, does not appear with certainty.

In April, 1846, the husband and wife came together, and thereafter resided in the same house, until the first of June, 1860, at which time the complainant left her husband and his house, and did not return.

During the first four or five years after they so came together, the parties cohabited.

During the entire period from 1846 to 1860, the complainant was supported by her husband as a member of his family, including an allowance of two hundred dollars per year for dress; he at one time speaking of her as a guest and visitor.

I also report that William J. Walker, the testator of the respondents, received from the complainant the sum of thirty-six thousand five hundred and forty dollars and thirty-four cents, being the amount and the sums mentioned in the bill Exhibit A.

These sums, with an exception of one thousand dollars, were, from

time to time, received by the complainant from the trustees named in the articles of separation in their checks, which checks were delivered by the complainant to the testator, to be by him invested for her benefit. The sum of one thousand dollars was the same which had been previously given to the complainant by the testator.

Upon the reception of these checks by the testator, he deposited them in bank to his own credit, in his own name, and thus mixed them with his own cash funds.

When these sums were received from the complainant, no receipt therefor appears to have been given or required.

I further report that no books of the testator have been produced, and, so far as appears, none existed in which the testator charged himself or credited the complainant with the sums received from her.

The testator did not make any investment in the name of the complainant, or in his own, as trustee for her of any portion of the sums received by him.

The testator, from 1846 to 1860, might, with reasonable diligence, have invested the money of the complainant in stocks of known market value, paying semi-annual dividends, in which he invested his own money.

91 I further report that the first item in Exhibit A was received by the testator on the first of September, 1846.

The other sums were received by him during the months of January and July in each year. At the several times at which the three first payments were made by the complainant to the testator, to wit, in September, 1846, January and July, 1847, they were made at his urgent request, after discussion, and upon an express agreement that they should be invested by the testator for the benefit of the complainant; the testator saying that she had no need of the money; all her wants were provided for while she was in the house with him; that he would invest the money for her; that it would be safer in his hands than in hers.

The subsequent sums constituting the other items in Exhibit A were paid by the complainant to the testator, and received by him, under the same agreement, for investment.

The testator was not restricted by the complainant as to the property in which he should invest. His responsibility in this respect rested upon his duty arising from his reception of the money for the purpose of investment.

I further report that the testator paid the sum of twenty-four hundred dollars, as stated in the bill Exhibit A, at the request and upon the account of the complainant, and is entitled to be credited therefor.

I further report that I have stated an account, and find the sum of sixty-seven thousand nine hundred and twenty-three dollars and twenty-nine cents due to the complainant, including interest up to the 4th of April, 1866.

I further report the sums received by the testator, except the two first items, were paid to him from time to time during the several months of January and July in each year.

I have computed interest upon the first item from the first of January to the 27th of March, 1847; upon the second item I have not charged interest; upon all the other items, in the account stated by me, I have computed interest from the first of April and first of October in each year, with annual rests, up to the first of June, 1860, at which time the complainant left the house of the testator and did not return.

92 I further report that the complainant insisted upon an allowance of interest, with semi-annual rests, up to the 4th of April, 1866, at which time the bill was filed.

This was disallowed upon the ground that semi-annual rests are severe, and to be adopted only in extreme cases.

I further report that the complainant could and ought to have called for an account at the time she left the house of the testator; and that the complainant, as averred in the bill, contemplated that the money was to remain under investment and under the charge of the testator, so long as the parties should live together. I also find, from the peculiar relation of the parties to each other, that it was the duty of the testator, at this time, to have rendered an account; and as he did not render any or offer to return the money and property in his hands, but retained it to his own use, mixed with his own money, he should be, and in the account stated he has been, charged with interest at six per cent. from the first of June, 1860, to the time at which the bill was filed.

I further report I have made annual rests as above stated upon the reasons stated, as follows: The testator received the money upon his own request—upon an express agreement to invest it for the benefit of the complainant. He might have invested in stocks of known market value. He did invest his own funds in such stocks. He deposited the money in bank in his own name, and thereby might have increased his credit and deprived the complainant of the means of tracing or identifying her money. He intentionally and persistently neglected to invest in accordance with the agreement under which he received the money.

I further report I do not find, from the proof before me, any danger of loss from any pecuniary inability of the testator to return the money, and I do not find, as it was insisted before me in behalf of the complainant, that the testator obtained the money with an intention to apply the same to his own use without accounting therefor.

I further report the respondents resisted the allowance of interest, and especially with rests, and insisted that the testator was bound, and, if not, had the right, under the receipt Exhibit A to retain, uninvested, the sum of six thousand dollars, for the purposes mentioned in said exhibit.

93 The agreement of the complainant in this respect has no consideration, so far as there is any proof before me, except such as may be implied from the paper; the supposed agreement of the complainant is executory in its character; the gifts to the children were to be made successively, and at a future period, and in such manner as might be agreed upon between the parties.

The third payment of money by the complainant to the testator was made subsequent to this paper, and upon an agreement for investment such as had previously been made, neither party referring to the contemplated gifts to the children.

I further report that the respondents requested an allowance for taxes upon the money in the hands of the testator.

The parties agreed before me that the average rate of taxation from 1846 to 1860 was one per cent.

This claim is disallowed because no proof was presented showing that the testator had paid any tax upon the money of the complainant, unless it was included in the taxes which he may have paid upon his own property.

By mixing her money with his own, no certain means exist by which to ascertain whether the money of the complainant, in whole or in part, during the years mentioned, was the subject of taxation in the hands of the testator.

I further report I have credited the respondents with the sum of eight hundred and fifty dollars and twenty-four cents, under date of June 1,

1860, being five per cent. upon the sum of seventeen thousand and four dollars and eighty-two cents, the last-named sum being the entire interest charged, prior to that date, to the testator; which allowance is the ordinary compensation allowed to trustees upon income received by them for the use of those entitled.

I have allowed two months and a portion of a month, an average of seventy-five days, as a reasonable time under the circumstances within which the testator might have invested, if he had intended to invest, the money received by him.

The entire proof before me consisted of the testimony in chief taken in the cause, and the examination of three witnesses as above
94 reported. The parties have been served with a draft report, to which they have severally filed objections, which are herewith reported.

All which is respectfully submitted.

C. B. GOODRICH, *Master.*

MAY 18, 1868.

Executors of William J. Walker in account with Eliza Walker.

DEBIT.

1846.			
September 1,	To Cash,	$1,918 90	
	" Interest from 1st Jan. 1847, to 27th March, 1847,	27 50	
1847.			
January 1,	To Cash,	$1,169 00	
			$3,115 40

CREDIT.

1847.			
March 27,	By Cash paid to sons by testator, at request of plaintiff,		$2,400 00

DEBIT.

" "	To Balance due from the executors,		$715 40
	" Interest to 1st June, 1860, 13 years 65 days, with annual rest,	827 01	
October 1,	" Cash,		1,526 82
	" Interest, 12 years 8 months,	1,668 33	
1848.			
April 1,	" Cash,		1,165 86
	Amounts carried forward,		

95 *Amounts brought forward,*

1848.			
April 1,	To Interest, 12 years 2 months,	$1,203 57	
October 1,	" Cash,		$1,455 63
	" Interest, 11 years 8 months,	1,418 11	
1849.			
April 1,	" Cash		1,285 73
	" Interest, 11 years 2 months,	1,179 38	

October 1	" Cash,		1,443 21
	" Interest, 10 years 8 months,	1,244 65	
1850.			
April 1,	" Cash,		806 30
	" Interest, 10 years 2 months,	652 11	
October 1,	" Cash,		1,152 74
	" Interest, 9 years 8 months,	872 69	
1851.			
April 1,	" Cash,		914 63
	" Interest, 9 years 2 months,	646 08	
October 1,	" Cash		1,830 86
	" Interest, 8 years 8 months,	1,203 97	
1852.			
April 1,	" Cash,		1,228 48
	" Interest, 8 years 2 months,	749 12	
October 1,	" Cash,		1,504 32
	" Interest, 7 years 8 months,	848 10	
1853.			
April 1,	" Cash,		758 65
	" Interest, 7 years 2 months,	393 50	
October 1,	" Cash,		1,146 40
	" Interest, 6 years 8 months,	544 84	
1854.			
April 1,	" Cash,		991 48
	" Interest, 6 years 2 months,	429 00	
October 1,	" Cash,		1,373 13
	" Interest, 5 years 8 months,	537 93	
	Amounts carried forward,		
96	*Amounts brought forward,*		
1855.			
April 1,	To Cash,		$1,186 66
	" Interest, 5 years 2 months,	$417 24	
October 1,	" Cash		1,470 04
	" Interest, 4 years 8 months,	460 08	
1856.			
April 1,	" Cash,		1,289 35
	" Interest, 4 years 2 months,	354 70	
October 1,	" Cash,		1,474 15
	" Interest, 3 years 8 months,	351 82	
1857.			
April 1,	" Cash,		1,254 21
	" Interest, 3 years 2 months,	254 51	
October 1,	" Cash,		1,434 97
	" Interest, 2 years 8 months,	241 85	
1858.			
April 1,	" Cash,		1,246 46
	" Interest, 2 years 2 months,	168 08	
October 1,	" Cash,		1,461 80
	" Interest, 1 year 8 months,	149 69	
1859.			
April 1,	" Cash,		1,280 17

	" Interest, 1 year 2 months,	90 38	
October 1,	" Cash,		1,429 13
	" Interest, — —— 8 months,	57 17	
1860.			
April 1,	" Cash,		1,341 35
	" Interest, — —— 2 months,	13 41	
			34,167. 84
June 1,	" Total amount of Interest,		16,977 32
	" Debits and interest to the 1st June, 1860,		51,145 16

97 CREDIT.

By 5 per cent. commissions on $17,004 82. The amount of Interest as charged above,	$850 24
Balance, 1st June, 1860,	50,294 92

DEBIT.

To interest from 1st June, 1860, to 4th April, 1866, filing of the bill, 5 years, 10 months, 3 days,	17,628 37
Balance, 4th April, 1866.	67,923 29

C. B. GOODRICH, *Master.*

Lowell Manufacturing Company.			Semi-annual dividends.																	
Average par $690.			1858. June.	Dec.	1859. June.	Dec.	1860. June.	Dec.	1861. June.	Dec.	1862. June.	Dec.	1863. June.	Dec.	1864. June.	Dec.	1865. June.	Dec.	1866. June.	Dec.	Total.
1858—May 20	5 shs. at $480	$2,400 00	$100	150	10 shares.															
Sept. 25	3 shs. at 500	1,500 00	....	90	400	400	400	400	250	250	400	600	400	600	700	500	300	400	....	....	$6,400 00
Oct. 2	2 shs. at 495	990 00	....	60																
	10 shs. cost	$4,890 00																		
1866—April 4	10 shs. at $855	8,550 00	Market value.																	
Excess of value above cost		$3,660 00																		
Dividends to April 4, 1866		6,400 00																		
Total gain		$10,060 00																		

Manchester Print Works.			Semi-annual dividends.																	
Par $1,000.			1858. Jan.	July.	1859. Jan.	July.	1860. Jan.	July.	1861. Jan.	July.	1862. Jan.	July.	1863. Jan.	July.	1864. Jan.	July.	1865. Jan.	July.	1866. Jan.	July.	Total.
1858—July 28	8 shs. at $750	$6,000 00	....	....	$320	400	400	400	400	240	320	400	1600	1600	1600	1600	1600	320	960	....	$12,160 00
1859—Dec. 6	1 sh	1,015 00	....	....	...	...	50	50	50	30	40	50	200	200	200	200	200	40	120	....	1,430 00
	9 shs. cost	$7,015 00																			
1866—April 4	9 shs. at $1,530	13,770 00	Market value.																		
Excess of value above cost		$6,755 00																			
Dividends to April 4, 1866		13,590 00																			
Total gain		$20,345 00																	Total dividends		$13,590 00

Great Falls Manufacturing Company.—Par. $200.			Semi-annual dividends.																	
			1858.	1859.		1860.		1861.		1862.		1863.		1864.		1865.		1866.		Total.
			Jan.	July.	Jan.	July.														
1858—Mar.	18	15 shs. at $137½		0	0															
" July	7	10 shs. at 142½			0															
" Aug.	13	15 shs. at 137½			0	July.		Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July.	
" Aug.	13	10 shs. at 137½		101 shs.	0	$606		808	1010	1010	606	808	1010	2020	1010	1010	1010	1010	0	$12,928 00
" Sept.	28	31 shs. at 135			0															
" Nov.	1	20 shs. at 135			0				July.	Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July.	Jan.	July.	
1861—Feb.	12	5 shs. at 172½				5 shs.			$30	40	50	100	50	50	50	50	0	50	....	470 00
1863—Sept.	12	5 shs. at 196											5 shs.	50	50	50	0	50	....	200 00
" Sept.	14	14 shs. at 197											14 shs.	140	140	140	0	140	....	560 00
1864—Jan.	5	22 shs. at 190											22 shs.		220	220	0	220	....	660 00
" Oct.	24	2 shs. at 210½													2 shs.	20	0	20	....	40 00
" Nov.	16	2 shs. at 210													2 shs.	20	0	20	....	40 00
		151 shs. cost															Total Dividends			$14,898 00
1866—Apr.	4	151 shs. at $195	Market value.																	
Excess of value above cost																				
Dividends to April 4, 1866																				
Total gain																				

Cocheco Manufacturing Co.—Par $650. July 1867, reduced to $500.

			Semi-annual dividends.										
			1858. Jan. July.	1859. Jan. July.	1860. Jan. July.	1861. Jan. July.	1862. Jan. July.	1863. Jan. July.	1864. Jan. July.	1865. Jan. July.	1866. Jan. July.	Total.
1858—June	29	4 shs. at $450 ..... $1,800 00	.....	$100 120	84 104							
1859—April	5	1 sh. at 500 00	.....	... 30	21 26	14 shares.						
1860—Feb.	7	5 shs. at $500 ..... 2,500 00	.....	.....	.. 130	350 0	350 350	560 700	0 0	350 280	560	$4,219 00
" Mar.	13	1 sh. at 510 00	.....	.....	.. 26		Extra dividend Feb. 1863—14 shares, at $50					700 00
" April	12	3 shs. at $507½ 1,522 50	.....	.....	.. 78		Capital returned July 1, 1867—14 shares, at $150					
		14 shares cost $6,832 50							Total dividends			$4,919 00
1866—April	4	14 shares at $700 ..... 9,800 00	Market value.									
Excess of value above cost $2,967 50												
Dividends to April 4, 1866 ..... 4,919 00												
Total gain $7,886 50												

Laconia Manufacturing Co.—Par $1,000.

			Semi-annual dividends.										
			1858. Feb. Aug.	1859. Feb. Aug.	1860. Feb. Aug.	1861. Feb. Aug.	1862. Feb. Aug.	1863. Feb. Aug.	1864. Feb. Aug.	1865. Feb. Aug.	1866. Feb. Aug.	Total.
1858—Dec.	15	1 share $630 00	.....	$30 30	30 40							
1859—April	20	6 shs. at $740 ..... 4,440 00	.....	.. 180	180 240	14 shares.						
1860—May	22	1 share 955 00	.....	.....	... 40	560 420	560 700	700 700	700 700	700 560	2,800	$10,110 00
" "	23	3 shs. at $955 ..... 2,865 00	.....	.....	... 120		Extra dividend Oct. 1862—14 shs. at $200					2,800 00
" "	28	3 shs. at $960 ..... 2,880 00	.....	.....	... 120		" " Jan. 1863—14 shs. at $200					2,800 00
		14 shs. cost $11,770 00							Total dividends			15,710 00
1866—April	4	14 shs. at $1,180 ..... 16,520 00	Market value.									
Excess of value above cost $4,750 00												
Dividends to April 4, 1866 ..... 15,710 00												
Total gain $20,460 00												

Amoskeag Manufacturing Co.—Par $1,000.			Semi-annual dividends.									
			1858. Feb. Aug.	1859. Feb. Aug.	1860. Feb. Aug.	1861. Feb. Aug.	1862. Feb. Aug.	1863. Feb. Aug.	1864. Feb. Aug.	1865. Feb. Aug.	1866. Feb. Aug.	Total.
1858—June 9	1 sh	$850 00	.... $30	40 40	16 shares.							
" July 13	5 shs. at $860	4,300 00	 150	200 200								
" Oct. 26	1 sh	892 50	.....	40 40	64 800	800 640	800 800	1,600 800	640 800	800 960	1,920	$13,340 00
1859—Jan. 11	6 shs. at $995	5,970 00	.....	240 240	Extra dividend March, 1863—16 shs., at $100							1,600 00
" Feb. 15	3 shs. at $930 x. d.	2,790 00	.....	 120	Total dividends							$14,940 00
	16 shs. cost	$14,802 50										
1866—April 4	16 shs. at $1,230	19,680 00	Market value.									
	Excess of value above cost	$4,877 50										
	Dividends to April 4, 1866	14,940 00										
	Total gain	$19,817 50										

New England Glass Co.—Par $500.			Semi-annual dividends.									
			1858. April. Oct.	1859. April. Oct.	1860. April. Oct.	1861. April. Oct.	1862. April. Oct.	1863. April. Oct.	1864. April. Oct.	1865. April. Oct.	1866. April. Oct.	Total.
1858—Oct. 16	4 shs. at $475 x. d.	$1,900 00	.....	$100 160	120 100	100 60	80 60	140 100	200 200	200 200	200	$2,020 00
	4 shs. cost	$1,900 00										
1866—April 4	4 shs. at $750 x. d.	3,000 00	Market value.									
	Excess of value above cost	$1,100 00										
	Dividends to April 14, 1866	2,020 00										
	Total gain	$3,120 00										

Mercantile Marine Ins. Co.—Par $100.

			Semi-annual dividends.																			
			1858. May.	Nov.	1859. May.	Nov.	1860. May.	Nov.	1861. May.	Nov.	1862. May.	Nov.	1863. May.	Nov.	1864. May.	Nov.	1865. May.	Nov.	1866. May.	Nov.	Total.
1858—Mar.	19	14 shs. at $110¼	$1,547	$112	112	140	84	112	70	129 shs.											
"	May	17	25 shs. at 107 ex. div.	2,675	....	200	250	150	200	125	642	645	774	645	645	645	774	774	1935	1290	774.	$11,739
1859—July	10	5 shs. at 128	640	....	...	...	30	40	25													
"	Oct.	18	5 shs. at 130	650	....	...	...	30	40	25												
1860—April	6	6 shs. at 127½	765	....	...	...	..	48	30													
"	June	8	24 shs. at 122	2,928	....	...	...	..	..	120												
"	"	19	50 shs. at 120	6,000	....	...	...	..	..	250												
			129 shs. cost	$15,205																		
1866—April	4		129 shs. at $140	18,060	Market value.																	
			Excess of value above cost	2,855																		
			Dividends to April 4, 1866	11,739																		
			Total gain	$14,594																		

Suffolk Bank.—Par $100.

			Semi-annual dividends.																			
			1858. Apr.	Oct.	1859. Apr.	Oct.	1860. Apr.	Oct.	1861. Apr.	Oct.	1862. Apr.	Oct.	1863. Apr.	Oct.	1864. Apr.	Oct.	1865. Apr.	Oct.	1866. Apr.	Oct.	Total.
1858—Oct.	12	5 shs. at $126	$630	.....	141 shs.																	
"	Nov.	5	5 shs. at 127	635.	.....																	
"	Nov.	15	6 shs. at 127	762	.....	$700	560	630	630	630	630	630	700	700	700	700	700	0	700	560		9,170
"	Dec.	2	24 shs. at 126½	3,036	.....	Extra dividend, Jan. 1865—140 shs. at $128,																17,920
"	Dec.	4	100 shs. at 126½	12,625	.....																Total dividends,	$27,090
			140 shs. cost	$17,688																		
1866—April	4		140 shs. at $115 ex. div	16,100	Market value.																	
			Excess of cost above value	$1,588																		
			Dividends to April 4, 1866	27,090																		
			Total gain	$25,502																		

Vermont & Canada Railroad.—Par $100.				Semi-annual dividends.									
				1858.	1859.	1860.	1861.	1862.	1863.	1864.	1865.	1866.	Total.
1855—April	4	10 shs. at $66½	$665 00										
"	" 12	10 shs. at 64	640 00										
"	" 16	10 shs. at 63	630 00										
"	" 30	10 shs. at 60	600 00										
"	May 4	3 shs. at 56	168 00										
"	" 30	10 shs. at 65	650 00										
"	June 13	shs. at 65	325 00										
"	" 14	5 shs. at 65	325 00										
"	" 19	20 shs. at 65	1,300 00				1861.	1862.	1863.	1864.	1865.	1866.	
"	July 11	15 shs. at 65	975 00	No dividends previous to 1861.			June. Dec.	June. Dec.	June. Dec.	June. Dec.	June. Dec.	June. Dec.	Total.
"	" 23	5 shs. at 60	300 00				306 shs.			443 shs.			
"	Dec. 10	23 shs. at 49½	1,138 50				$1224 1224	1224 1224	1224 1224	1772 1772	1772 1772	.....	$14,432
"	" 14	8 shs. at 49	392 00										
"	" 17	16 shs. at 49	784 00										
1856—Jan.	16	26 shs. at 47	1,222 00										
"	" 17	2 shs. at 47	94 00										
"	" 30	5 shs. at 47¼	236 25										
"	Feb. 12	7 shs. at 48¼	337 75										
"	" 14	15 shs. at 48	720 00										
"	Aug. 28	1 sh	45 00										
1858—Nov.	27	100 shs. at $30	3,000 00										
1864—Feb.	1	137 shs. (stock div'd)											
		433 shs. cost	$14,547 50										
1866—April	4	443 shs. at $98¾	43,635 50	Market value.									
Excess of value above cost			$29,088 00										
Dividends to April 4, 1866			14,432 00										
Total gain			$43,520 00										

Northern Railroad.—Par $100.

					Semi-annual dividends.																				Total.
					1848.		1849.		1850.		1851.		1852.		1853.		1854.		1855.		1856.		1857.		
					June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	
					1st. Div.																				
1847—Dec.	20	100 shs. at	$101½	$10,125 00	$350	0	0	200	200	200	250	250	250												
1849—July	25	5 shs. at	68	342 50			0	10	10	10	12½	12½	12½												
1853—Mar.	7	50 shs. at	58¼	2,931 25																					
"	"	18	11 shs. at	57½	632 50										550	550	*	0	0	0	416	416	416	416	$4,471 50
"	"	19	3 shs. at	57½	173 25																				
"	"	29	10 shs. at	59	590 00																				
"	"	31	10 shs. at	60	600 00																				
"	May	12	19 shs. at	60½	1,149 50																				
"	Aug.	29	50 shs. at	57½	2,862 50										...	125	*	0	0	0	100	100	100	100	525 00
"	Sept.	8	25 shs. at	56	1,400 00										...	62½	*	0	0	0	50	50	50	50	262 50
1855—April	2	20 shs. at	40½	815 00															0	0	40	40	40	40	160 00
"	"	6	15 shs. at	40½	607 50														0	0	30	30	30	30	120 00
			318 shs.	Cost	$22,229 00	Market value.					Semi-annual dividends—Continued.														5,539 00
1866—April	4	318 shs. at	$93 ex.d.		29,574 00																				
							1858.		1859.		1860.		1861.		1862.		1863.		1864.		1865.		1866.		
							June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	June.	Dec.	
Excess of value above cost				$7,345 00																					
Divs. to April 4, '66				19,531 00																					
Total gain				$26,876 00	318 shs.	$636	636	636	636	636	636	636	636	636	636	636	1272	954	954	954	†2,226				13,992 00
																							Total dividends		$19,531 00

*$2 per sh. placed to the credit of holders, May 27, 1864, but not *paid* until June 1, 1866.
†The div. due June, 1866, was *paid* April 1, $7 per sh. regular and extra.

Boston & Maine railroad.—Par $100.

			Semi-annual dividends.																				Total.
			1849. Jan.	1849. July.	1850. Jan.	1850. July.	1851. Jan.	1851. July.	1852. Jan.	1852. July.	1853. Jan.	1853. July.	1854. Jan.	1854. July.	1855. Jan.	1855. July.	1856. Jan.	1856. July.	1857. Jan.	1857. July.	1858. Jan.	1858. July.	
1849—May 16	79 shs. at $106½.	$8,393 75	....	0	$434½	237	158	276½	276½	276½	276½	316											
1850—Jan. 10	71 shs. at 105¾.	7,508 25	....	....	.....	213	142	248½	248½	248½	248½	284											
" Sept. 10	79 shs. at 104 .	8,216 00	....	....	.....	....	158	276½	276½	276½	276½	316	481 shs.										
1851—Mar. 17	74 shs. at 104½.	7,733 00	....	....	.....	....	....	259	259	259	259	296	1924	1924	1924	1443	1443	1443	1443	1443	1443	1443	$24,543 50
" " 31	25 shs. at 104½.	2,606 25	....	....	.....	....	....	.....	87½	87½	87½	100											
1852—June 21	79 shs. at 104½.	8,275 25	....	....	.....	....	....	.....	....	276½	276½	316											
" Aug. 4	74 shs. at 106½.	7,890 25	....	....	.....	....	....	.....	.....	.....	259	296											
1854—Sept. 25	13 shs. at 100⅛.	1,309 75	....	....	.....	....	....	.....	.....	.....	.....	....	.....	.....	52	39	39	39	39	39	39	39	325 00
1855—Apl. 25	38 shs. at 99 .	3,762 00	....	....	.....	....	....	.....	.....	.....	.....	....	.....	.....	.....	114	114	114	114	114	114	114	798 00
1856—Sept. 8	58 shs. at 77 .	4,466 00	....	....	.....	....	....	.....	.....	.....	.....	....	.....	.....	.....	.....	.....	.....	174	174	174	174	696 00
1857—June 12	10 shs. at 86½.	865 00	....	....	.....	....	....	.....	.....	.....	.....	....	.....	.....	.....	.....	.....	.....	.....	30	30	30	90 00
	600 shs. cost	$61,025 50																					$26,452 50
1866—Apl. 4	600 shs. at $119	71,400 00	Market value.																				
Excess of value above cost,		$10,374 50																					
Dividends to April 4, 1866,		60,652 50																					
Total gain.....		$71,027 00																					

Semi-annual dividends—Continued.

1859. Jan.	1859. July.	1860. Jan.	1860. July.	1861. Jan.	1861. July.	1862. Jan.	1862. July.	1863. Jan.	1863. July.	1864. Jan.	1864. July.	1865. Jan.	1865. July.	1866. Jan.	1866. July.	
$2100	2400	2400	2400	2400	2100	1800	1800	2400	2400	2400	2400	2400	2400	2400	.....	34,200 00
															Total dividends.....	$60,652 50

Old Colony and Newport R.R.—Par $100.			Semi-annual dividends.											
			1850. Jan.	1850. July.	1851. Jan.	1851. July.	1852. Jan.	1852. July.	1853. Jan.	1853. July.	1854. Jan.	1854. July.	1855. Jan.	1855. July.	1856. Jan.	1856. July.	1857. Jan.	1857. July.	1858. Jan.	1858. July.	1859. Jan.	1859. July.	Total.
1850—Jan. 23	176 shs. at $66...	$11,616 00	.....	0	0	352	0	0	0	0	0	0									
1851—April 2	250 shs. at 58¼...	14,531 25	.....		.....	500	0	0	0	0	0	0									
1851—Feb. 11	30 shs. at 68....	2,040 00	.....		.....	60	0	0	0	0	0	0									
" —May 3	25 shs. at 68....	1,700 00	.....		.....	50	0	0	0	0	0	0									
" — " 5	10 shs. at 68....	680 00	.....		.....	20	0	0	0	0	0	0									
" —June 25	25 shs. at 67½...	1,687 50	.....		.....	50	0	0	0	0	0	0									
" —Sept. 11	30 shs. at 66....	1,980 00	.....		.....		0	0	0	0	0	0									
" —Dec 11	25 shs. at 66....	1,650 00	.....		.....		0	0	0	0	0	0									
" — " 16	92 shs. at 64½...	5,934 00	.....		.....		0	0	0	0	0	0									
1852—Jan. 1	100 shs. at 64....	6,400 00	.....		.....		.....	0	0	0	0	0	1218 shs.								
" — " 6	32 shs. at 63....	2,016 00	.....		.....		.....						$3654	3654	3654	3654	3654	3654	3654	3654	$37,572
" —Feb. 28	33 shs. at 60½...	1,988 25	.....		.....		.....	0	0	0	0	0	(carried forward.)								
" Mar. 1	12 shs. at 60½...	723 00	.....		.....		.....	0	0	0	0	0									
" —Apl. 22	10 shs. at 61....	610 00	.....		.....		.....	0	0	0	0	0									
" — " "	214 shs. at 61....	13,054 00	.....		.....		.....	0	0	0	0	0									
1853—May 14	5 shs. at 86½...	432 50	.....		.....		.....	0	0	0	0	0									
" — 25	40 shs. at 86½...	3,470 00	.....		.....		.....		.....	0	0	0									
" —Aug. 31	27 shs. at 93....	2,511 00	.....		.....		.....		.....	0	0	0									
" —Sept. 27	2 shs. at 93....	186 00	.....		.....		.....		.....		0	0									
" —Oct. 27	50 shs. at 90½...	4,525 00	.....		.....		.....		.....		0	0									
1854—Feb. 24	30 shs. at 88....	2,640 00	.....		.....		.....		.....		.	0									
	1218 shs.	$80,374 50																			

Old Colony & Newport railroad—Continued.			Semi-annual dividends.																		Total.
			1854. Jan.	1854. July.	1855. Jan.	1855. July.	1856. Jan.	1856. July.	1857. Jan.	1857. July.	1858. Jan.	1858. July.	1859. Jan.	1859. July.	1860. Jan.	1860. July.	1861. Jan.	1861. July.	1862. Jan.	1862. July.	1863. Jan.	1863. July.	
1854—Mar.	1	1218 shs. cost.... $80,374 50	Dividends to 1860 included in previous sheet.....												$3654	3654	3654	3654	3654	3654	$21,924 00
" "	1	5 shs. at $93.. 465 00	0	0	15	15															
" "	6	10 shs. at 97½... 977 50	..	0	30	30															
" "	15	25 shs. at 100... 2,500 00	..	0	75	75															
" "	20	10 shs. at 99¾... 997 50	..	0	30	30															
April	7	1 sh..... .... 98 00	..	0	3	3															
" "	13	10 shs. at 97½... 975 00	..	0	30	60															
" "	17	20 shs. at 94.... 1,880 00	..	0	60	60															
" "							745 shares														
" "	19	6 shs. at 94.... 564 00	..	0	18	18	2235	2235	2235	2235	2235	2235	2235	2235	2235	2235	2235	2235	2235	2235	35,730 00
Sept.	2	214 shs. at 100... 21,400 00	..	..	642	642															
" "	15	10 shs. at 100½.. 1,002 50	..	..	30	30									Dividends *to* 1860 on previous sheet.....						37,572 00
Oct.	1	350 shs. *Stock div.*	..	..	1050	1050															
	7	34 shs. at 80½... 2,737 00	..	..	102	102															
"	20	2 shs. at 80½... 161 00	..	..	6	6															
"	25	38 shs. at 79½... 3,021 00	..	..	114	114															
1855—Feb.	28	10 shs. at 75¼... 755 00	..	..	....	30															
		1963 shs. cost...$117,908 00																			
															Dividends carried forward.....						$95,226 00

Old Colony and Newport Railroad—Continued.			Semi-annual dividends.				
			1863.	1864.	1865.	1866.	Total.
			Jan. July.	Jan. July.	Jan. July.	Jan. July.	
			1,963 shares.				
1855—Feb. 28	1,963 shs. cost	$117,908 00	$5,889	....	....	....	$5,889 00
Sold.							
1863—April 18	100 shs. at	12,100 00	1,863 shares.	1,863 shares.			
	1,863 shs. at	$105,808 00	 5,589	5,589	....	....	11,178 00
1864—Jan. 1	745 shs. stock div.						
	2,608 shs.						
Sold.							
1864—May 17	217 shs. at	26,908 00		2,391 shares.			
	2,391 shs. cost	$78,900 00	....	 9,654	9,654 9,654	9,654	38,256 00
1866—April 4	2,391 shs. at $105	251,055 00	Market value				
	Excess of value above cost	$172,155 00			Dividends *to* 1863, previous sheet		95,226 00
	Cash dividends to April 4, 1866	150,549 00					
	Total gain	$322,704 00			Total dividends		$150,549 00

109 *Objections taken by plaintiff to the draft of the report of the master to whom this cause stands referred.*

First. For that the said master has found and reported that the testator paid the sum of twenty-four hundred dollars, ($2,400,) as stated in the bill, (Exhibit A,) at the request and upon the account of complainant, and is entitled to be credited therefor, whereas he should have found and reported that of said sum the testator should be credited with the sum of fifteen hundred dollars ($1,500) only, which by the terms of said exhibit was alone agreed by the parties to be paid or deducted from said trust property or its income.

Second. For that the said master has found and reported that the sum of sixty-seven thousand nine hundred and twenty-three dollars and twenty-nine cents, ($67,923 29,) including interest, only is due to the plaintiff up to April 4th, 1866, whereas he should have found and reported that a much larger sum was due to plaintiff, to wit, a sum equal to all the sums found by him to have been received in trust by said testator from the plaintiff, deducting said sum of fifteen hundred dollars, ($1,500,) with interest on all said sums from and after thirty days from the receipt thereof, compounded semi-annually up to the death of testator, with simple interest thereafter.

Third. For that said master has found and reported that he has computed interest upon the several sums received by testator, as shown by Exhibit A annexed to plaintiff's bill, in January and July of each year, (except the first two sums named in said exhibit,) from the first of April and the first of October of each year, with annual rests up to June 1st, 1860, the time when the plaintiff left the testator's house, whereas he should have found and computed said interest from the dates and in the manner stated in the second foregoing exception for plaintiff.

Fourth. For that the said master has found and reported that the plaintiff could and ought to have called for an account at the time she left the house of testator, and the plaintiff contemplated that the money was to remain under investment and under charge of the
110 testator only so long as the parties should live together, and thereupon said master has found and charged in said account only simple interest from said first day of January, 1860, the date of filing plaintiff's bill, whereas the master should have found and reported both the facts and the law to be otherwise, and that the plaintiff is entitled to interest compounded in the manner and to and from the dates stated in the foregoing second exception, and to simple interest thereafter as stated in said exception.

Fifth. For that the master has reported that he does not find that the testator obtained the money with an intention to apply the same to his own use, without accounting therefor, whereas he should have found and reported that the testator did obtain said moneys with said intention, or that he formed said intention after the receipt of the same, or part thereof, and thereupon acted upon such intention.

Sixth. For that the said master has allowed and credited to respondents the sum of eight hundred and fifty dollars and twenty-four cents ($850 24) as a compensation to said testator, as trustee of said moneys or fund, whereas, upon the facts found by the master and by those disclosed in the evidence, said testator was entitled to no compensation whatever as trustee.

Seventh. For that the said master has (in his said draft,) found and reported that the evidence offered by plaintiff of the purchase of shares of stock by the testator, at the times and in the manner set forth in the

offer of proof recited in said report, and of the prices paid by testator therefor, the amount of dividends received therefrom by him, and the market value of said stocks at the date of filing of plaintiff's bill, are neither competent or sufficient upon the proof before said master for the purpose, and as the basis upon which an account can be taken of the profits made by the testator from the investments which he may have made in his own name, whereas he should have found and reported that such evidence was competent and upon the proofs before the said master sufficient for that purpose.

In all which particulars the plaintiff objects to the draft of the report by the master, and submits that the same ought to be altered accordingly; and inasmuch as a report of all the evidence will be
111 necessary in case either of the foregoing objections are overruled or disregarded by the master, and as all the evidence laid before him consisted of the oral testimony embodied in the draft of the report, together with the deposition forming part of the record, and used at the hearing before the court, the plaintiff requests the master to state and certify to the court that all the evidence before him was as above stated.

By S. BARTLETT,
Counsel for Plaintiff.

United States circuit court, district of Massachusetts.—May T. 1868.

ELIZA WALKER
vs.
JOSEPH S. BEAL *et al.*, executors. } In equity.

Respondents' objections to master's report.

And now the respondents come and object to the report of the master in the above cause.—

First. Because said master has allowed interest upon the sums alleged to have been paid to the said William J. Walker, deceased, by the complainant.

Second. Because said master has made annual rests in the computation of said interest.

Third. Because of the refusal of said master to make any allowance or deduction for taxes during the period it is alleged said funds were held by said William J. Walker.

Fourth. Because the master has found that "the testator from 1846 to 1860, might, with reasonable diligence, have invested the money of the complainant in stocks of known market value, paying semi-annual dividends, in which he invested his own money," when such finding was unwarranted by any evidence before him.

BENJ. F. THOMAS,
HENRY C. HUTCHINS,
Solicitors for Respondents.

112 On the 19th day of May, A. D. 1868, the complainant filed the following exceptions to the report of the master, namely:

ELIZA WALKER, in equity,
vs.
JAS. S. BEAL *et al.* } U. S. circuit court, Mass. district.

Exceptions taken by the plaintiff in this cause to the report of the master to whom this cause stands referred.

First. For that the said master has found and reported that the testa-

tor paid the sum of twenty-four hundred dollars, ($2,400,) as stated in the bill, (Exhibit A,) at the request and upon the account of complainant, and is entitled to be credited therefor, whereas he should have found and reported that of said sum the testator should be credited with the sum of fifteen hundred dollars ($1,500) only, which, by the terms of said exhibit, was alone agreed by the parties to be paid or deducted from said trust property or its income.

Second. For that the said master has found and reported that the sum of sixty-seven thousand nine hundred and twenty-three dollars and twenty-nine cents, ($67,923 29,) including interest, only is due to the plaintiff up to April 4, 1866, whereas he should have found and reported that a much larger sum was due to plaintiff, to wit, a sum equal to all the sums found by him to have been received in trust by said testator from the plaintiff, deducting said sum of fifteen hundred dollars, ($1,500,) with interest on all said sums from and after thirty days from the receipt thereof, compounded semi-annually up to the death of testator, with simple interest thereafter.

Third. For that said master has found and reported that he has computed interest upon the several sums received by testator, as shown by Exhibit A annexed to plaintiff's bill, in January and July of each year, (except the first two sums named in said exhibit,) from the first of April and the first of October of each year, with annual rests up to June first, 1860, the time when the plaintiff left the testator's house, whereas he should have found and computed said interest from the dates and in the manner stated in the second foregoing exception for plaintiff.

113 Fourth. For that the said master has found and reported that the plaintiff could and ought to have called for an account at the time she left the house of testator, and that the plaintiff contemplated that the money was to remain under investment and under charge of the testator only so long as the parties should live together; and thereupon said master has found and charged in said account only simple interest from said first day of January, 1860, to the date of filing of plaintiff's bill, whereas the master should have found and reported both the facts and the law to be otherwise, and that the plaintiff is entitled to interest compounded in the manner and to and from the dates stated in the foregoing second exception, and to simple interest thereafter as stated in said exception.

Fifth. For that the master has reported that he does not find that the testator obtained the money with an intention to apply the same to his own use without accounting therefor, whereas he should have found and reported that the testator did obtain said moneys with said intention, or that he formed said intention after the receipt of the same, or part thereof, and thereupon acted upon said intention.

Sixth. For that the said master has allowed and credited to respondents the sums of eight hundred and fifty dollars and twenty-four cents, ($850 24,) as a compensation to said testator as trustee of said moneys or fund, whereas upon the facts found by the master and by those disclosed in the evidence said testator was entitled to no compensation whatever as a trustee.

Seventh. For that the said master has (in his said draft) found and reported that the evidence offered by plaintiff of the purchase of shares of stock by the testator, at the times and in the manner set forth in the offer of proof recited in said report, and of the prices paid by testator therefor, the amount of dividends received therefrom by him, and the market value of said stocks at the date of the filing of plaintiff's bill, are neither competent or sufficient upon the proof before said master for

the purpose, and as the basis upon which an account can be taken of the profits made by the testator from the investments which he
114 may have made in his own name, whereas he should have found and reported that such evidence was competent, and upon the proofs before the said master sufficient for that purpose.

Wherefore the plaintiff doth except to the said master's report, and appeals therefrom to the judgment of this court.

By S. BARTLETT,
Counsel for Plaintiff.

On the twenty-second day of May, A. D. 1868, the respondents filed the following exceptions to the report of the master, namely:

United States circuit court, district of Massachusetts.—May T., 1868.

ELIZA WALKER
vs.
JOSEPH S. BEAL *et al.*, executors. } In equity.

Respondents' exceptions to master's report.

And now the respondents come and except to the report of the master in the above cause—

First. Because said master has allowed interest upon the sums alleged to have been paid to the said William J. Walker, deceased, by the complainant.

Second. Because said master has made annual rests in the computation of said interest.

Third. Because the instalments of income alleged to have been paid to the respondents' testator, were so subject, under the agreement in Exhibit B, to the order or draft of the complainant for her personal expenses and any charitable objects she might wish to favor, that his estate ought not in equity to be charged with interest upon the same, and the master has erred in finding that he should be so charged with interest.

Fourth. Because upon the sum of six thousand dollars, which, by the agreement in the memorandum Exhibit B, the respondents' testa-
115 tor was to hold to be divided among the other five children of the complainant, to wit: Frances, Emily, Kate, Ellen, and Abba J., the master has allowed interest with rests, whereas no interest should have been allowed upon said sum.

Fifth. Because of the refusal of said master to make any allowance or deduction for taxes during the period it is alleged said funds were held by said William J. Walker; among other reasons, because the master finds that the testator mixed the moneys of the complainant with his own, and all the personal property of the testator was the legal subject of taxation during the time covered by complainant's bill; and because charging the testator's estate with the reasonable profits of a trust judiciously managed, a deduction for taxes would be rightly made.

Sixth. Because the master has found that "the testator, from 1846 to 1860, might, with reasonable diligence, have invested the money of the complainant in stocks of known market value, paying semi-annual dividends, in which he invested his own money," when such finding was unwarranted by any evidence before him.

Seventh. Because the master has found that the respondents' testator intentionally and persistently neglected to invest in accordance with the

agreement under which he received the money of the complainant, and there is no sufficient evidence for such finding.

B. F. THOMAS,
HENRY C. HUTCHINS,
Solicitors for Respondents.

116 This cause was thence continued to the present October term of this court, A. D. 1868, when the same is set down for hearing upon exceptions to the report of the master, and fully heard.

On the twenty-fifth day of November the clerk reports the following computation, made by direction of the court, and approved by the master appointed in this cause, namely:

117 *Executors of William J. Walker in account with Eliza Walker.*

1847.			
March 27.	To Balance due from the executors,		715 40
	" Interest to 2d April, 1865, 18 years 6 days, with annual rests,	1,328 63	
October 1.	" Cash,		1,526 82
	" Interest, 17 years 6 months 1 day,	2,708 59	
1848.			
April 1.	" Cash,		1,165 86
	" Interest, 17 years 1 day,	1,974 05	
October 1.	" Cash,		1,455 63
	" Interest, 16 years 6 months 1 day,	2,353 73	
1849.			
April 1.	" Cash,		1,285 73
	" Interest, 16 years 1 day,	1,981 01	
October 1.	" Cash,		1,443 12
	" Interest, 15 years 6 months 1 day,	2,119 73	
1850.			
April 1.	" Cash,		806 30
	" Interest, 15 years 1 day,	1,126 36	
October 1.	" Cash,		1,152 74
	" Interest, 14 years 6 months 1 day,	1,532 11	
1851.			
April 1.	" Cash,		914 63
	" Interest, 14 years 1 day,	1,153 60	
October 1.	" Cash,		1,830 86
	" Interest, 13 years 6 months 1 day,	2,192 03	
1852.			
April 1.	" Cash,		1,228 48
	" Interest, 13 years 1 day,	1,392 21	
October 1.	" Cash,		1,504 32
	" Interest, 12 years 6 months 1 day,	1,613 98	
1853.			
April 1.	" Cash,		758 65
	" Interest, 12 years 1 day,	768 15	

October 1.	" Cash,		1,146 40
	" Interest, 11 years 6 months 1 day,	1,095 46	
	" Amounts carried forward,		
118	To amounts brought forward,		
1854.			
April 1.	" Cash,		991 48
	" Interest, 11 years 1 day,	890 95	
October 1.	" Cash,		1,373 13
	" Interest, 10 years 6 months 1 day,	1,160 12	
1855.			
April 1.	" Cash,		1,186 66
	" Interest, 10 years 1 day,	938 82	
October 1.	" Cash,		1,470 04
	" Interest, 9 years 6 months 1 day,	1,088 48	
1856.			
April 1.	" Cash,		1,289 35
	" Interest, 9 years 1 day,	889 34	
October 1.	" Cash,		1,474 15
	" Interest, 8 years 6 months 1 day,	946 30	
1867.			
April 1.	" Cash,		1,254 21
	" Interest, 8 years 1 day,	745 14	
October 1.	" Cash,		1,434 97
	" Interest, 7 years 6 months 1 day,	787 78	
1858.			
April 1.	" Cash,		1,246 46
	" Interest, 7 years 1 day,	628 06	
October 1.	" Cash,		1,461 80
	" Interest, 6 years 6 months 1 day,	674 34	
1859.			
April 1.	" Cash,		1,280 17
	" Interest, 6 years 1 day,	536 08	
October 1.	" Cash,		1,429 13
	" Interest, 5 years 6 months 1 day,	541 06	
1860.			
April 1.	" Cash,		1,341 35
	" Interest, 5 years 1 day,	453 98	
			34,167 84
	" Total amount of Interest,		33,620 09
119	" Debits & Interest to the 2nd April, 1865,		67,787 93

CREDIT.

	33,620 09	
	27 50	
By 5 per cent. commission on $33,647 59 the amount of interest as charged above,		1,682 38
Balance 2d April, 1865,		$66,105 55

1868.
November 22. To interest, 3 years 7 months 20 days, $66,105 55, 15,645 30

$81,750 85

Respectfully submitted:

JOHN G. STETSON, *Clerk.*

I have examined the above, & it is correct.

C. B. GOODRICH.

120 And on the same day the following decree is entered, namely:

Circuit court U. S., Mass. district.—Oct. T., 1868.

ELIZA WALKER *vs.* JOSEPH S. BEAL *et al.* } Final decree.

This cause came on to be heard upon exceptions to the master's report & for a final decree.

And thereupon, after hearing the counsel of the respective parties, it is ordered, adjudged, and decreed—

1st. That the several exceptions of respondents to the master's report are overruled & disallowed.

2d. That the 1st, 2d, 5th, 6th, & 7th of the complainant's exceptions to the master's report are overruled & disallowed.

Third. That the 3d & 4th of the complainant's exceptions to the
121 master's report are allowed so far that the computation of interest with annual rests should be made up to the time of the death of the testator, & the clerk of this court was directed to compute the amount of surcharge of the account reported by the master, consequent on the allowance of these exceptions, & his computation having been made & reported to the court, & no exception being taken thereto, the same is allowed & confirmed.

Fourth. That upon the report of the said master, corrected as is above stated by the court, & the report of the clerk of the court respecting the computations aforesaid allowed & confirmed by the court, the complainant is justly & equitably entitled to recover of the respondents, in their said capacity of executors; & it is the final decree & judgment of this court that the complainant do recover of the respondents, in their said capacity of executors, the sum of eighty-one thousand seven hundred and fifty dollars and eighty-five cents, and costs of the suit to be taxed by the clerk, & that they are entitled to execution according to the course of the court.

122 Thereupon the respondents, in open court, file the following claim of appeal, namely:

And now, defendants, feeling aggrieved at the decree of this court, come and claim an appeal therefrom to the Supreme Court of the United States, & pray that the same may be allowed.

HENRY C. HUTCHINS,
Solicitor for Respondents.

And said respondents give good and sufficient security to prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, which security is approved by the court, and said appeal is allowed accordingly.

And said complainant in open court claims an appeal from so much of the decree as overrules the exceptions of the complainant to the master's report made in this cause; and said complainant gives good and sufficient security to prosecute her said appeal to effect, and answer all damages and costs if she fail to make her plea good, which security
123 is approved by the court, and said appeal is allowed accordingly.

A true record:

Attest: JOHN G. STETSON, *Clerk.*

124 At the hearing of said cause, the following evidence was used:

125

126 Circuit court of the United States, Massachusetts district.—In equity.

ELIZA WALKER, complainant,
vs.
JOSEPH S. BEAL *et al.*, respondents.

Deposition of Eliza Walker.

Eliza Walker, of the city of New York, aged seventy-three years, widow of the late Dr. William J. Walker, and plaintiff in the above-named cause, being duly sworn, deposes and says as follows:

I executed the indenture, a copy of which, marked Exhibit C, is annexed to the bill in this case.

(Counsel for defendants object to the competency of any testimony from this witness, more especially testimony to any conversations or transactions between her and her husband.)

Mr. Uriel Crocker settled with me for the trust estate. He was the only one of the trustees that I had anything to do with.

Qu. In what form did he settle with you? What did he deliver you, if anything?

Ans. By checks, always, to me personally. That is, he delivered them to me always personally.

Qu. Did you ever collect those checks, or in any manner receive the money for them, or any part of it?

(Objected to as above.)

Ans. No, I did not. ELIZA WALKER.

The foregoing deposition, given by the above-named witness, and by her subscribed on the seventeenth day of September, A. D. 1866, in presence of S. Bartlett, esquire, counsel for complainant; Messrs. B. F. Thomas and H. C. Hutchins, counsel for defendants; Joseph S. Beal, one of the defendants; and myself.

FRANCIS W. PALFREY,
Special Examiner.

127 Circuit court of the United States, Massachusetts district.—In equity.

ELIZA WALKER, complainant,
vs.
JOSEPH S. BEAL *et al.*, defendants.

Deposition of Uriel Crocker.

Uriel Crocker, of the city of Boston, aged seventy years, printer and publisher, being duly sworn, deposes and says as follows:

I first became acquainted with the late Dr. William J. Walker, I should think, about 1815. I became intimate, more intimate with him from 1820, and was quite intimate with him from that time till about 1860. The last years of his life, after 1860, we were not on such friendly terms. There were times when he would be out a little, but usually we could meet on business. We always met on business as often as once a year.

1 qu. Did Dr. Walker at any time, and, if so, when, confer or talk with you in relation to his situation in regard to his wife? If so, fix the date, and what he said, if anything, in relation to what had occurred between them.

(Question objected to as incompetent.)

Ans. As near as I can recollect, it was the beginning of 1846. He came to the store one day, and said he supposed that I knew that his wife had left him; that he wished—after talking it over and telling me about it, which I didn't know anything about it till that time, never had heard of it—I would come over to his house that evening, that he wanted to talk with me about it. I did go, and stayed there till about
128 two o'clock at night or in the morning. He said that she had employed counsel—Judge Warren—to obtain a separate maintenance, and that he wished me to confer with John R. Adan, counsellor-at-law, (who is now dead,) and see what could be done about it. I did confer with Mr. Adan. I had several interviews with Mr. Adan, and he wanted me to confer with John, the doctor's son. I did confer with his son John. After several interviews, I told the doctor then that we had advised to make a settlement, and that we had agreed to advise him to put so much money in trust. He asked me the amount, and I told him that we advised him to put fifty thousand dollars in trust for his wife. (Counsel for defendants object to so much of the foregoing as is oral testimony to negotiations, the results of which were embodied in writing.) He agreed to it, upon one condition—I believe that was the only one—that I should be one of the trustees.

2 qu. Whether or not was the amount of the sum to be put in trust matter of discussion between you and the doctor; and, if so, what was said?

(Objected to as above.)

Ans. There was no discussion between the doctor and us about it. The thing was settled between Mr. Adan and me, and he assented to it. I say there was no discussion about it. There was a little. He, in the course of conversation, asked us how we come to this conclusion, or something like that, and I told him that we had conferred with John, and that he was knowing to the fact—well knew the fact—that at one time he received between thirty and forty thousand dollars from her father's estate. He consented to the amount, and he subsequently requested me to have the papers drawn. The papers were drawn and executed, and the property put in trust, and I was one of the trustees.

3 qu. Please state whether, when you say that Dr. Walker said his wife had applied to Judge Warren to obtain a separate maintenance, those were the words used, or if others were used also, what those were.

(Objected to—form and substance.)

Ans. It was a divorce and separate maintenance. That was the words.

4 qu. Whether or not did you know enough of Dr. Walker's affairs to know at that time about the amount of his property? If so, please state what you estimated it at.

(Objected to as incompetent.)

Ans. From what I knew of his property I should say, and should
129 have said then, that he was worth between three and four hundred thousand dollars.

5 qu. Whether or not, after the execution of the trust-deed, did you have any conversation with Dr. Walker on the subject of Mrs. Walker's immediate necessities; if so, what was it?

(Objected to—substance.)

Ans. After the trust-deed was executed, I remarked to the doctor that Mrs. Walker would have no income from the property for some six months to come; that she probably owed some money; and that I should advise him to give her a thousand dollars for that purpose, which was done.

6 qu. If at any time afterwards you had any conversation with Dr. Walker as to what became of that money, please state it, and state how long it was afterwards, as near as you can recollect.

(Objected to.)

Ans. When I made the first payment, or was about to make the first payment of the income of the trust property, which was in September, 1846—the September following—he came to collect payment, with an order from Mrs. Walker. I paid him the money, although I objected to it; he stating that he had advised Mrs. Walker to have him invest this amount—the amount of the income—with the thousand dollars she hadn't used, for her benefit; and if she should not need it, it would then go to her children, and that she had agreed to it.

(Answer objected to as not being responsive.)

7 qu. Whether or not at any time afterwards, and when, Dr. Walker applied to you to ascertain whether you had paid the income to Mrs. Walker? If so, state what occurred at that interview.

(Objected to, and question thereupon put in following form:)

Qu. Whether or not at any time afterwards, and when, Dr. Walker made any application to you in relation to the income? If so, state all that occurred at the interview.

(Objected to as incompetent.)

Ans. He used to talk about the income frequently; but some four or five years afterwards, I should say, he came to me, and asked me if I had paid the income to Mrs. Walker, and if I had not. And when informed I had not, he wished me to defer it for a few days, as all was not right at the house, and he feared if I paid it over, she would not be
willing to have it invested for her as he wished. Some few days
130 afterwards he came and stated that all was right, and he wished I would go up and pay it, as he had a good chance to invest it; which I did.

8 qu. Did Dr. Walker and his wife live together in the same house after the deed of trust; and, if so, how soon after?

Ans. I recollect that soon after the deed of trust he wished me to look out a house for him—that he wished for a home for his children; and I looked at several houses with him for that purpose. In the early part of May, 1846, some two months after deed of trust, I should think, we purchased the house of William Lawrence, in Bulfinch street, next the Revere House.

They moved into the house some months after. I think they were down at Plymouth, and moved up in the fall. It must have been somewheres in September or October that they moved in. (Answer objected to as incompetent.) I understood they lived together at Plymouth—kept house together. They lived together in Bulfinch street after they came from Plymouth. I believe they were living together at Plymouth at the

time Mrs. Walker gave Dr. Walker the order for the first payment of income.

9 qu. In any of the interviews with the doctor, which you have stated in relation to the payment over by Mrs. Walker to him of the income of the trust-fund, did he or not say anything, and, if so, what, as to her position in his house after she returned to live with him, or as to her wanting or not wanting money? State fully, and state also at which of the interviews anything was said on this subject, if anything was said and you recollect.

(Objected to—form and substance.)

Ans. I recollect of his saying to me, that so long as she remained in his house, he should treat her as a visitor or guest; and that she would not want any money. I think this was the very first interview—I am sure it was, [because at that time we had a good deal of discussion about paying the money to him. I objected to doing so, and never would after that pay him a dollar. I always afterwards paid it to her.

(From bracket objected to as irresponsive and incompetent.)

10 qu. Who kept the accounts of the trustees? Who stated and settled them? Who paid over the income? How was it paid, by cash or by check? To whom was it paid personally?

(Objected to—form and substance.)

131 Ans. I kept the accounts of the trustees; I stated and settled them; I paid over the income; always by check; always to Mrs. Walker, except the first one, which was to her husband, Wm. J. Walker.

11 qu. Will you produce the 1st account, or a copy thereof, of which the balance was paid to Dr. Walker as you have stated?

Ans. I produce the original account. (Paper to be annexed to deposition marked for identification, F. W. P., 1.)

12 qu. Have you searched for and found any of the checks given by you in settlement of the balances of the income of the trust-fund? If so, will you produce them, and say if you have been able to find the residue?

Ans. I produce those I have found—eleven in number. The residue I have been unable to find. (Checks produced, and to be annexed as exhibits, marked F. W. P., and numbered from 2 to 12, both inclusive.)

13 qu. Where did Dr. Walker keep his bank account?

Ans. At the Atlantic Bank, Boston.

14 qu. Were the letters *A.*, *Atc.*, *Wjw.*, which appear on the face of some of the checks, on the checks when you delivered them, or have they been placed there since? I mean those on the checks dated July 10, 1854; Jan. 26, 1855; July 12, 1855; Jan. 11, 1856; July 8, 1856; Jan. 3, 1857; Jan. 5, 1858; July 3, 1858; Jan. 6, 1859; July 9, 1859.

Ans. They were not on them when I delivered them, at any rate. They must have been placed there since.

15 qu. Are Mr. Waldo and Mr. Adan, witnesses to the trust-deed, both dead?

Ans. They are.

Cross-examination:

Cross. 1. You have produced one account as trustee; where are the rest?

Ans. They are at my store.

Cross. 2. Will you please produce those accounts for our examination?

Ans. I will, and I now produce them. (This after an interval, to give time to procure them. The parties agree that they need not be annexed.)

132 Cross. 3. Did you take receipts from Mrs. Walker, the complainant, when you paid her the income, other than such as appear in the accounts produced by you?

Ans. I never did, other than those.

Cross. 4. You say that you always delivered your checks to Mrs. Walker personally, in payment of the income; where did you find her or meet her? Where were these payments made?

Ans. I found her always at the house in Bulfinch st., and paid her the income there. I always took care to go when I knew the doctor was not there.

(Last line and a half objected to by d'f'ts as not responsive to the question.)

Cross. 5. When Mrs. Walker left the doctor in 1846, were the parties before that living in Charlestown?

Ans. They were before she left him. That was in 1845. The settlement was not made till the beginning of 1846.

Cross. 6. Where did she go or reside during the period of this separation?

Ans. All that I know about that is, that at the time he called on me with a view to effecting a settlement, she was residing in High st., Boston—boarding in High st.

Cross. 7. Did the children remain with the doctor during the absence of the mother, or go with the mother?

Ans. I can't positively say about that; I always understood that they remained with the mother. Some of them were with her in High st.

(Objection by d'f'ts to so much of the answer as refers to what he understood, and not to his own knowledge.)

Cross. 8. Do you know which of the children went with the mother, and which remained with the father during their separation?

Ans. I do not.

Cross. 9. You say the parties first lived together, after the indenture of separation, at Plymouth. Where did they live there? Did they keep house or board there? Were the children there with them; and how long did they live in Plymouth? State as accurately as you can.

Ans. All I know about it is, that the doctor went to Plymouth, and said that his wife and children were there with him. I never saw them there. I understood they were there together, and kept house there together. I never went there to see them.

133 Cross. 10. How long after the execution of the indenture was it before the parties were reconciled? Was it when they went to Plymouth; and if they were reconciled before, how long before?

Ans. I couldn't say, but I believe very soon after they got reconciled they went to Plymouth. I had no knowledge about it, but that's what I understood.

(Objected to hearsay by plaintiff.)

Cross. 11. Did you understand so from Dr. Walker?

(Objected to by plaintiff.)

Ans. I did.

(Objected to as incompetent by plaintiff.)

Cross. 12. When did he so inform you?

Ans. At about that time. Sometime in the summer of 1846.

Cross. 13. Did you not understand the same from Mrs. Walker?

Ans. I did not.

Cross. 14. How soon after the reconciliation before you saw Mrs. Walker, and was it at their house in Bulfinch st?

(Objected to, as assuming that there was any reconciliation, by plaintiff.)

Ans. I didn't see her after she went to Plymouth till I saw her in Bulfinch st.

Cross. 15. Did you see Mrs. Walker after she had returned to her husband, and before she went to Plymouth?

(Objected to by plaintiff as assuming a fact not proven.)

Ans. I did not.

Cross. 16. After the execution of the indenture, did you see Mrs. Walker before she went to Plymouth?

Ans. I cannot positively say; I saw her at the time of the execution, but afterwards I cannot positively say that I did.

Cross. 17. State your best recollection on the subject, whether you did or did not see her.

Ans. My best recollections are that I did not, but I cannot positively say.

Cross. 18. Did you not hear of the fact of their reconciliation before they went to Plymouth?

(Objected to by pl'ff as assuming facts not proved.)

Ans. I did not. The first that I knew was that they were at Plymouth. That was about the first.

Cross. 19. Did you not have a conference or consultation with
134 the counsel who drew this bill, before the bill was drawn; and did you not, among other things, state to them the time when Mrs. Walker returned to live with her husband?

Ans. I did have such a conference. I have no recollection of making any such statement to them, but I may have done it.

Cross. 20. Refreshing your recollection, did you not state that it was in the month of April, 1846, that Mrs. Walker returned to live with her husband?

Ans. I have no recollection of stating such a fact; I may have stated that they went to Plymouth about April, 1846, but I don't recollect stating even that.

Cross. 21. Did they live together in Charlestown after their separation? Did they go from Plymouth to Bulfinch st., Boston, or to Charlestown? State accurately when they went to Bulfinch st.

Ans. They did not live together in Charlestown after their separation that I knew of; they went from Plymouth to Bulfinch st., Boston; I cannot state with accuracy when they went to Bulfinch st.; I should say about September or October, 1846.

Cross. 22. Did you visit them while they lived together in Bulfinch street, and how frequently?

Ans. I did; I might call there sometimes pretty often, and then not go there for two or three months; that is, I used to go there to see the doctor; I didn't have much to do with visiting the family; she used to be in the room sometimes.

Cross. 23. You say the parties lived together in Bulfinch st.; how long did they live together there, after going there in the fall of 1846?

Ans. I should think they lived together till somewheres about June, 1860, there.

2 p. m. Hearing adjourned to Tuesday, Sep. 25, 1866, 10 a. m.

TUESDAY, *September 25th*, 1866—10 a. m.—Hearing resumed.

Cross. 24. While they lived together in Bulfinch street, did their children live there with them?

Ans. I should say they did; that is, all except Joseph, and those that were married and away.

135 Cross. 25. What children had the doctor by the complainant? Give their names and ages, as near as you can.

Ans. I don't think I could do that. There was John—the oldest, I think—John, Emily, Joseph; then Catharine, then Frances, Abigail. Some had deceased; I can't recollect their names. His eldest daughter, I think, died. I should think that Frances was the oldest of the two—Catharine and Frances. I cannot give their ages.

Cross. 26. Which of the children died before the decease of the doctor? How many were living at his decease?

Ans. The one that was deceased was, I think, Frances—the first Frances. There were living at his death, Emily, Frances, Catharine, Edward, and Abigail. I wish to add to my last answer that he also had a son named Edward.

Cross. 27. Did you visit the family in Charlestown, and before the execution of the indenture of separation?

Ans. I did.

Cross. 28. How frequently?

Ans. Not very often. I used to go over there from time to time to see the doctor and the family, in the same manner as I did in Bulfinch street. I would sometimes dine there, and take tea there.

Cross. 29. When you visited the family in Bulfinch street, did you observe any difference in the relation of Mrs. Walker to the family, from that which she held before the separation and when they lived in Charlestown?

Ans. I did not.

Cross. 30. Who supported the family, supplied the table, and clothed the family, and paid the ordinary household expenses, during their residence in Bulfinch street?

Ans. I don't know.

Cross. 31. What means had Mrs. Walker, other than the income from the trust-fund paid to her by you, during their residence in Bulfinch street? State fully, if you know, and what it was.

Ans. I don't know that she had any means further than that. I never knew of any.

Cross. 32. You say you received one thousand dollars from the [the] doctor when the indenture of separation was executed. Upon
136 what terms was it paid to you? Was it an advance by the doctor, to be repaid, or a gift?

Ans. It was a—that was a gift to support her until there was an income from the property.

Cross. 33. Was it to be an addition to the trust fund?

Ans. It was not.

[There is no omission here, only an accidental misnumbering, skipping the number 34.—F. W. P.]

Cross. 35. What did you do with that one thousand dollars? To whom and when pay it?

Ans. It was sent to her by John, I believe. The doctor handed it to me through John.

Cross. 36. In your last answer, are you stating facts within your own knowledge?

Ans. No, I am not. I could not say positively.

Cross. 37. Did the one thousand dollars come into your hands either from the doctor or from Mrs. Walker? Did you ever have anything to do with it?

Ans. It did not come into my hands. The doctor wanted me to take it, but I told him I thought he had better send it by John. He offered to give it to me; I had nothing further to do with it.

Cross. 38. In your direct examination you speak of an interview be-

tween you and the doctor, as to his taking and investing the income of the trust-fund. Do you give the precise language used by the doctor in your answer?

Ans. I gave it as near as I can recollect.

Cross. 39. State from memory again, as near as you can, the precise words used by the doctor upon that occasion.

Ans. The doctor said—[Perhaps, in the first place, I ought to say that I objected to paying the doctor this money. Mr. Adan had advised me always to pay it to her.]—The doctor said that he had Mrs. Walker's consent; that he had advised her and got her consent to have it invested for her benefit; and if she should not need it, it would go to her children. That's about all, I believe.

(Part in brackets objected to by counsel for defendants as irresponsive and incompetent.)

137 Cross. 40. When first did you repeat this conversation after that interview, and to whom?

Ans. I don't recollect.

Cross. 41. Did you ever repeat it before stating it to the counsel in this case.

Ans. I have, I think.

Cross. 42. To whom, and when?

Ans. I think I have stated it to Emily, the daughter of Dr. Walker. I don't recollect when; perhaps some time within one or two years. I may have stated it to others; but I don't recollect any one, except counsel.

Cross. 43. Can you say with confidence that you ever repeated it to any one before the death of Dr. Walker?

Ans. I cannot say that I did, except that I may have done it to Emily.

Cross. 44. If you repeated it to Emily before the death of Dr. Walker, state when it was, where it was, and all that occurred upon that occasion.

Ans. I have stated before that I did not recollect that I had done it; if I did, it was to Emily.

Cross. 45. When did you first state this conversation to the counsel for the complainant?

Ans. I should think is was just before this suit was commenced.

Cross. 46. Fix as nearly as you can the time.

Ans. I should say it was sometime in the first of the year 1866.

Cross. 47. Did the counsel, at the time of your stating that conversation, take notes of it in writing?

Ans. I did not see him.

Cross. 48. I repeat the question.

Ans. I did not see him. He did not do it to my knowledge.

Cross. 49. When was the first time that you repeated the conversation to counsel, and that notes were taken?

Ans. I should think about a week since.

Cross. 50. Did you make any memorandum of this conversation of the doctor as to investment, at the time it took place, or at any time subsequent?

Ans. I did not.

138 Cross. 51. You spoke of an interview with the doctor in your direct examination, wherein he requested you to keep back the income, if you had not paid it to Mrs. Walker. Do you give, in your answer, the precise language used by the doctor upon that occasion, or only the substance of it?

Ans. I gave the language as near as I can recollect it.

Cross. 52. Are you confident that you recollect the language?

Ans. I am not, exactly; no, not the very words. I recollect the substance, and, I think, the words.

Cross. 53. Will you repeat, from memory, the words used by the doctor upon that occasion as nearly as you can.

Ans. The doctor inquired if I had paid Mrs. Walker the semi-annual dividend; and when informed I had not, he said he wished I would defer it a few days, as all was not right at the house; and if I did, she would not be willing to have him invest it as he wished for her. A few days afterwards he called, and wished me to pay it over that day, as he had a good chance to invest it. That's all, I believe. I mean he said a good chance to invest it for her.

Cross. 54. When was this interview? State the time as accurately as you can, and where it took place, and who was present.

Ans. I should think some four or five years after indenture was made, either in January or July. I don't think I could put it any more definite than that. There was no one present that I know of. It was at my store.

Cross. 55. Did you make, at the time, any note or memorandum of the conversation of the doctor, or of the language used by him at this time?

Ans. I did not.

Cross. 56. When and to whom did you first repeat this conversation as to which we have been inquiring?

Ans. To Emily, I should say, first. It was probably soon after the doctor's decease.

Cross. 57. To whom, besides Emily, and when? Have you ever repeated this conversation?

Ans. I have repeated it to counsel; about the first of the present year, I should think.

139 Cross. 58. Did you ever repeat this conversation to the counsel for the complainant before the 17th of June, 1865?

Ans. I may have done it, but I am not positive.

Cross. 59. From your best recollection, did you or did you not?

Ans. I should think I did not.

Cross. 60. Were you at the funeral of Dr. Walker, in Newport?

Ans. I was.

Cross. 61. From January 1, 1860, to the death of Dr. Walker, did you ever repeat either of these conversations which you have been inquired of as to?

Ans. I think I did not; but I may.

Cross. 62. You say, in your direct examination, that you were at one time intimate with the doctor. State when your relations changed. Will you fix the time as nearly as you can? I do not ask the cause, but the time.

Ans. There was a coldness between us, I should think, from 1854 or '5; I should say from 1855. That's as near as I can fix the time.

Cross. 63. Were your friendly relations restored after that?

Ans. I do not think the same friendship was restored.

Cross. 64. Were you upon speaking terms with the doctor after that?

Ans. We used to speak together when we were at meetings of South Cove. We used to talk together. He once after that time invited me—that is to say, the directors of the Old Colony R. R. Co. invited me—to go to Newport; and I said I didn't want to go, because it wouldn't be

agreeable to the doctor, perhaps. He was one of the directors. Mr. Holmes, who asked me to go, said that it was the doctor's particular wish that I should go; that he wished that I should be invited. I accepted and went. We were absent two days, and the doctor was as pleasant as he ever was. (Answer objected to by defendants as not responsive.) Subsequent to that, I might state, he sent for me to come to his house to consult about extending the Old Colony road to Newport.

Cross. 65. When did you last visit the doctor's house?

Ans. The last time I was there particularly was when he sent for me to consult about extending the Old Colony railroad to Newport.
140 He had all the plans there. This was in 1857, I think; just before the act of incorporation of the Old Colony and Newport R. R. Co. was obtained.

Cross. 66. Did you visit Dr. Walker at Newport, after he left Boston?

Ans. I did not.

Cross. 67. When did you last speak to the doctor, or have any conversation with him?

Ans. I should think in February, 1865.

Cross. 68. Was not the doctor, for some time before his death, hostile to you, and did he not seek to remove you from your position as trustee under the indenture.

Ans. He was hostile to me, and did——

Cross. 69. You have taken an active part, have you not, in promoting this suit, and have frequently advised with counsel concerning the same, have you not?

Ans. I have taken a part in it, and have been before counsel in regard to it, when they requested me to come.

Cross. 70. Did you advise Mrs. Walker to institute this suit?

Ans. I cannot say that I did.

Cross. 71. Have you conferred with her on the subject, before the suit was brought?

Ans. I have.

Cross. 72. Did you have any conversation with her in relation to the bringing of a suit before the death of Dr. Walker? If so, state the time—I do not call for the conversation.

Ans. I do not think I ever did.

Cross. 73. What fact in relation to this suit and the grounds upon which it is sought to be maintained, is known to you now, that was not known to you before April, 1865?

Ans. I don't recollect anything.

Cross. 74. In answer to a question put to you, you said that the doctor said to you that Mrs. Walker was coming to his house as a guest or visitor. Which of those terms was used, or were both?

Ans. They were both used.

Cross. 75. Did you not know at the time or before this bill was brought that, after the reconciliation in the spring of 1846, Dr. Walker
141 lived with his wife as he had before any separation, occupying with her one sleeping apartment; or did you not so believe at the time? (Last line of question objected to by plaintiff; also the word "reconciliation," as assuming a fact not proven.)

Ans. I did not. When I went to the doctor's house, they always had two separate chambers—occupied two separate chambers. The doctor slept at the head of the stairs; and I understood his wife's chamber was over the other side—the opposite side of the entry.

Cross. 76. How soon, with reference to their return to Bulfinch st., did you so understand?

Ans. I should think it was not a great while after they returned there; I was then on friendly terms with the doctor, and frequently called in the evening to see him. I used to find him most always in bed at the head of the stairs. Sometimes he would see me there, and sometimes he would dress himself and come into the front chamber.

Cross. 77. State whether you know that they occupied different sleeping apartments. I speak not of information, but of your own knowledge.

Ans. I do not.

Cross. 78. State whether in the early summer of 1846 you were not informed that they occupied the same sleeping apartment at Plymouth, and that by a person who slept in the next apartment, who heard the conversation between them while in bed, and who spoke to you on the subject?

(Objected to by plaintiff as incompetent.)

Ans. I have no recollection of any such conversation, or any such persons having made such a statement to me.

Cross. 79. As it may refresh your recollection, state whether Miss Fanny Walker did not so say to you, or some one of the daughters, suggesting to you, at the time of the conversation, her fears that the reconciliation might not be permanent, from the conversation she had heard?

(Objected to by plaintiff as incompetent.)

Ans. I have no recollection of any such conversation ever having been had—not the least.

Cross. 80. Have you such degree of confidence in your memory on this subject as to be able to say that such information was not given you, and such conversation not had?

(Objected to as before.)

142 Ans. I have—I never heard it before to-day.

Cross. 81 In the conversations and negotiations leading to this indenture, or afterward, during the year 1861, did you have any conversation or interviews with the Reverend Dr. Ellis, of Charlestown, upon the subject?

Ans. I have no recollection that I did.

Cross. 82. Are you able to say whether you did or did not?

Ans. I should say I did not.

Cross. 83. Have you any doubt upon the point?

Ans. Dr. Ellis may have spoken to me casually—asked me about the Walkers—but I have no recollection of any conversation with him upon that point.

Cross. 84. I repeat the question.

Ans. I did not; I have no doubt about it, I think; I haven't the least recollection of it.

Cross. 85. In the course of the negotiations leading to the indenture, did you see any sketch in writing of the provisions of that indenture before the indenture was signed?

Ans. I think not. Mr. Adan drew up the indenture in his own handwriting, and made three copies of it in his own hand. To the best of my recollection, I did not.

Cross. 86. You have a suit at law, have you not, in your own name, against the executors of Dr. Walker, now pending in the United States circuit court, upon this same indenture of trust?

Ans. I have, I suppose.

Cross. 87. Have you not the same counsel in your case as in this?

Ans. I have not. Mr. Bartlett is one of my counsel.

Re-examination:

Mr. Adan was Dr. Wm. J. Walker's counsellor. I did not know till after Dr. Walker's death that he had not invested Mrs. Walker's income of the trust-fund. I have compared Exhibit "A," annexed to plaintiff's bill, with my accounts-current of the trust-fund with Mrs. Walker, and all except the first item is correct, and show the amount I paid over to Mrs. Walker, except an error of forty cents in one of the items.

143 Re-cross:

Re-cross. 1. Did not you and Mr. Kettell prepare a list of the stocks and investments of Dr. Walker, and give it to the executors, or exhibit it to the executors, or give them a copy of it; and was not such a list made up from your knowledge of the investments of Dr. Walker?

Ans. We made such a list, and I think we gave the executors a copy of it, or showed them the list—I am not sure which. I know they had a copy of it. The list was made up chiefly from the knowledge of Mr. Kettell; he knew more particularly, and made it up.

Re-cross. 2. Now, Mr. Crocker, from June, 1860, to the time of the death of Dr. Walker, in 1865, had you any doubt that the funds which you say you paid over to Mrs. Walker had not been invested by Dr. Walker in her name, or in his name as her trustee?

(Objected to, as impertinent and inadmissible, by plaintiff.)

Ans. I can only say I had my doubts whether it was invested so.

Re-cross. 3. Did you not believe that the funds so paid by you to Mrs. Walker had not been invested in the name of Mrs. Walker, or in the name of Dr. Walker, as trustee of Mrs. Walker.

(Objected to as above.)

Ans. I did not so believe. I did not believe that they were so invested. I couldn't but have a faint hope that the doctor, as he approached the close of life, would have made, if he hadn't done it, some appropriation of property of his own—stocks of his own—to make up the amount paid to him by his wife.

(All from "I couldn't but have" objected to as irresponsive and incompetent.)

Re-cross. 4. Did you not understand that the amount of property intended to be put in trust by that indenture was the amount Mrs. Walker had received, or the doctor through her, from her father's estate?

Ans. I did at that time. We supposed that was about the amount.

Re-cross. 5. State if any of the trustees under this indenture have, since its execution, died, and which and when; and if their places were, at any time, and when, filled, and by whom; and whether before the doctor's death. (Objected to as impertinent to the issue in this case.)

Who are the present trustees?

144 Ans. John B. Walker, and Joseph Walker, and Thomas Marshall have died. I think John died in 1848; Joseph about 1858. I don't recollect about Marshall; but he died since Joseph died. Joseph took the place of John. That was before the doctor's decease. Joseph's place was not supplied till since the doctor's death. My son, Uriel H. Crocker, took Marshall's place. Emily and Uriel H. took places as trustees at the same time, after the doctor's death. I ought not to say that Uriel H. took Marshall's place. He filled one of the two vacancies caused by the death of Marshall and Joseph Walker.

URIEL CROCKER.

The foregoing deposition by the deponent subscribed on the twenty-fifth day of September, A. D. 1866, in presence of S. Bartlett, esquire,

counsel for complainant; Messrs. B. F. Thomas and H. C. Hutchins, counsel for defendants; and myself.

FRANCIS W. PALFREY,
Special Examiner.

145 Circuit court of the United States, Massachusetts district.—In equity.

ELIZA WALKER, complainant,
vs.
JOSEPH S. BEAL *et al.*, defendants.

Deposition of Emily H. Walker.

Emily H. Walker, of New York City, aged thirty-nine years, daughter of the plaintiff and of the late Wm. J. Walker, being duly sworn, deposes and says as follows:

My father and mother separated about September, 1845. My mother was fifty-two and my father fifty-five. They had seven children, then living—four daughters and three sons—the eldest was twenty-five, and the youngest nine. Four daughters and one son were living with their parents when they separated. My sister Mrs. Ladd, and myself went with my mother, and he kept the others with him.

1 qu. Did your mother leave your father voluntarily or otherwise?

(Objected to by defendants.)

Ans. She did not leave him voluntarily.

2 qu. What led her to leave him?

Ans. He had invited a few friends to dine. The dinner displeased him. (Expression of any opinion by witness objected to by defendants.) I did not say so of my own authority. He stated so to me. [He, on that account, obliged my mother, and my sister Mrs. Ladd, and myself to leave the house.] (Passage in brackets objected to by counsel for defendants, as not a statement of facts, but conclusion or result.) She begged him to allow her to stay, on account of the children. He would not listen to her, but compelled her to go.

146 3 qu. State what language he used that compelled her to go, or what he did.

Ans. He told her that she should not remain longer in his house. This was in the afternoon, [and sent us away, knowing that we had very little money—not sufficient to pay our expenses.]

(Part in brackets objected to by defendants.)

4 qu. Where did your mother go? How long she stay? Did she return or attempt to return to the house; and, if so, what occurred?

Ans. She went to Portsmouth, where she remained one week. She then returned to Charlestown, where we were then residing—to my father's house in Charlestown—hoping that he would allow her to remain. She asked him again to allow her to stay on account of the children, and I heard him tell her—say to her, that she should leave the house that day with my sister and myself; and we did so, without money, without having received any money from him for our expenses. We went to Fitchburg on that day, where we remained till the last of November.

5 qu. Did your mother apply to counsel, and was a deed of separation afterwards executed?

Ans. I can answer that I knew she did by hearsay only; a deed of separation was afterwards executed.

6 qu. Prior to this time, and for how long prior, what had been your

father's treatment and conduct towards your mother? Was it kind or otherwise? State all that you can recollect.

(Objected to by defendants—form and substance.)

Ans. I can never remember the time when he didn't treat her cruelly.

(Answer objected to as stating an opinion, not a fact, by defendants.) I can remember her face discolored from personal violence from him. He constantly threatened her with turning her from the house. He said, in my presence, the kitchen was the proper place for her; that he should not allow her to come into the parlor. I remember that at this time that he said this, when friends came to see her, she was not allowed to see them. I remember one case particularly, a friend came to see her, a lady, and she was not allowed to see her.

7 qu. For how long, if at all, did this state of things subsist between your father and your mother, prior to her leaving the house?

(Objected to, form and substance, by defendants.)

147 Ans. From my earliest remembrance.

8 qu. What effect had your father's conduct upon your mother? Was she fearless or careless about the matter, or how otherwise? State how she appeared.

(Objected to by defendants—form and substance, and as calling for opinions, not for facts.)

Ans. She was in constant dread of him, and has often expressed to me her fear lest he should commit some act of violence. I can remember on one occasion her taking myself and some of the other children and hiding from him in fear.

(Answer objected to as irresponsive and otherwise incompetent.)

9 qu. Did your father and mother subsequently go to Plymouth? If so, at what date? Which of the children went with them? How long did they remain; and did they or not live together in the same house?

Ans. They went to Plymouth the last of April, 1846. My three sisters and I and Edward and my youngest brother went with them. They remained there until October of the same year. They lived together in the same house. When they returned, they returned to Boston, to live in the house in Bulfinch st.

10 qu. After your father and mother returned from Plymouth, and how soon after, if at all, did anything occur between your father and mother in regard to any check of the trustees under the articles of separation? State all that you saw and heard.

(Objected to—substance.)

Ans. I can remember my mother's receiving the first check after her return to Boston, which was in January. My father wished her to give him the check unconditionally. She refused, and kept possession of it for three or four days, during which time I heard discussion constantly upon the subject of the check. Finally, she gave it up to him. He had told her previously that she had no need of the money; all her wants were provided for while she was in the house with him; that he would invest the money for her; that it would be safer in his hands than in hers.

11 qu. Did he make her the promise to invest the check for her at the time she gave it up, or at another time?

Ans. I don't know that I understand the question; but he promised to invest the money at the time he received it for her.

12 qu. What occurred at the time your mother received the next check? State the details if you were present and know.

(Objected to—substance.)

148 Ans. There was the same discussion. Father desiring to receive the check unconditionally, as before; mother refusing to give it up

13 qu. State what then occurred in detail; all that your father said, if anything.

Ans. He again told her that she had no use for the money while she was with him. That he would provide for her wants. That he would invest it for her. [On this condition she gave it to him.]

(Part in brackets objected to as the conclusion of the witness merely.)

14 qu. Did your mother or not say anything about his receiving it on that condition?

(Objected to—form and substance.)

Ans. She said that she would not give it up to him excepting upon condition that he invested it for her.

15 qu. Whether or not were you present, and, if so, frequently or infrequently, when the checks of trustees were given to your mother down to the time of their separation in 1860? If so, what did your mother do with them?

(Objected to—substance.)

Ans. I was more frequently present than not. She gave them to my father.

16 qu. Whether or not was there any further discussion between your father and mother at the time she delivered him these checks? If so, what was it?

(Objected to—substance.)

Ans. There was some discussion when she delivered him the next check—the third. He wished to receive the check, as before, unconditionally. The discussion ended by his promising to invest this check, and all others he should receive from her, for her benefit. After this I heard no further discussion upon her delivering—when she delivered him the checks in future—after that.

17 qu. Was your father severely ill after this at any time? If so, state the date, and whether you attended him, and whether constantly or otherwise.

Ans. He was severely ill in the spring of 1855, in March and April, and after; and I attended him constantly.

18 qu. Did he say anything to you at that time, and, if so, what, in relation to his health or condition or fears?

(Objected to—substance.)

Ans. He told me that he was very ill; that he could live but a few weeks—possibly a few days.

149 19 qu. Did he say anything to you at that time, and, if so, what, in relation to pecuniary matters? State all that he said carefully.

(Objected to—substance.)

Ans. He said there were some things which he had neglected to attend to. This neglect troubled him a great deal. He had neglected, he said, to invest the money which he had received from my mother, which she had received from the trustee, Mr. Crocker; that he had intended to invest it. The difficulty with him had been to find a safe investment. It was her money, and all she had. It would not do to risk anything with it. This he said to me, not once, but many times.

4.50 p. m. Hearing adjourned to Wednesday, September 26th, 1866, 10.30, a. m.

WEDNESDAY, *Sept.* 26, 1866—10.30 a. m.—Present, Messrs. Bartlett, Hutchins, Thomas, Beal, and the witness.

20 q. Whether or not, at any time or times, and when, did your father say anything to you upon the subject of your mother's dress, while they

were living at the house in Bulfinch st., after the trust-deed was executed? If so, state all that he said, and fix the date or dates as near as you can.

(Objected to—substance.)

Ans. He said to me a number of times that the sum of two hundred dollars, which he gave her for her dress, was more than she needed for that purpose. During the first week of July, 1859, he stated to me that he did not think the whole of the two hundred dollars which he allowed her for her dress was spent for that purpose; she had no need of money for any other expenses; he supplied her with everything else. He wished me to keep an account of her expenses for dress, and return to him any money which might be left from the two hundred dollars after what clothing she needed had been paid for.

21 qu. How long did your father and mother live in the house in Bulfinch street? Did your mother leave the house and your father; and, if so, when, and under what circumstances?

(Objected to—substance.)

Ans. They lived there a little over fourteen years—from the time they came from Plymouth until she left him. She left him and the
150 house in June, 1860. She left because she did not think she could live with him any longer in safety. (The reason objected to as matter of opinion, not of fact, by counsel for defendants.) My sister Abby had been ill since the previous September. He was very angry that she was ill. He went into her room only once during all that time, and then to say she should be down stairs attending to household affairs—although she was unable to leave her bed. At the time of this visit of my father to her room—— ("I ask the examiner to ask the witness whether she is speaking of facts seen by her, or conversations heard by her, or not." This request being made by counsel for defendants, question is put, and thus answered): I am speaking partly of facts of my own hearing and seeing, and partly from hearsay.

22 qu. Please revise your answer to the last question as far you had proceeded, and state what portion of it is hearsay.

Ans. I had from my sister that he went into her room only once from September to June, as I have stated. I did not, myself, ever see him in her room. Also what he said about her being down stairs, I had from my sister.

(Defendants object to the whole of the two preceding answers.)

23 qu. Will you state now any other fact within your own knowledge, or any declarations of your father, showing the circumstances under which your mother left your father.

(Objected to—substance.)

Ans. I was ill in bed, suffering great pain at the time, June, 1860; my sister Abby was still confined to her room; my mother came up to my room, begged me to dress and go down. (Counsel for defendants request examiner to repeat question to witness, and warn her that she is to testify to facts only within her own knowledge. The examiner does so.) [I was obliged to get up and dress and go down with her, because she was afraid to go into the room alone. That is what I was going to say. She told me that she did not dare to go into the room alone.] (Foregoing in brackets objected to by defendants as irresponsive.) The morning of the day she left, my father said to me that my sister and myself had altogether too much freedom. He wished us to take a room on the same floor with his own, where he could have the opportunity of seeing what was going on. This he wished me to tell my sister, and have the arrangement made at once. I objected to telling her, or to making the ar-

151 rangement, telling him that I did not think she was well enough to be troubled in this way. He sent for my sister; kept her three quarters of an hour in a room alone with himself. I am testifying to a fact of my own knowledge. I was outside the door all the time. (Last two lines, in answer to question put by examiner, at request of counsel for defendants, whether in testifying that her father kept her sister three quarters of an hour in a room alone with himself, she was testifying to a fact within her own knowledge.) He then leftthe house, leaving my sister very much exhausted and excited. She begged my mother, and myself to, if we ever hoped to see her well, to take her from the house. In three quarters of an hour we left the house—my mother, my sister Abby, my brother Edward, and myself; but not upon the impulse of the moment. We had been making our arrangements for two or three weeks. We had two or three trunks packed, but had intended to stay till after the first of July. After what occurred the morning of this day, we did not dare to remain any longer in the house.

(Whole answer objected to by defendants.)

Cross-examination:

Cross. 1. Whose house did your father and mother occupy at Plymouth? Did they keep house there, or board?

Ans. They kept house. It was a widow lady's house. I have forgotten the name.

Cross. 2. Describe the house at Plymouth, and state how the different rooms were occupied.

Ans. I ask whether I cannot decline to answer that question? (Counsel for plaintiff tells her she must answer it. Counsel for defendants direct that the inquiry be noted. Counsel for plaintiff instructs witness that she need not decline to answer any question put by the other side. Counsel for defendants object to the giving of this instruction, and request that their objection be noted to the giving of the instruction by the counsel, instead of by the magistrate. The question of the witness was addressed not to the magistrate, but to counsel for plaintiff, and answered by him immediately.) There were five rooms, bedrooms, on the second floor; one above. One of them was occupied by my father and mother; one by Mrs. Ladd, my sister; one by my
152 sister Abby and myself; one was a spare room; one was occupied by the servants. My brother Edward slept up stairs.

Cross. 3. Who supported the family at Plymouth?

Ans. My father.

Cross. 4. Who slept in the chamber next to that occupied by your father and mother at Plymouth?

Ans. One room was a spare room; the other was occupied by my sister Mrs. Ladd—Frances W. The rooms were not connected.

Cross. 5. How long before going to Plymouth was it that your father and mother became reconciled? State as nearly as you can.

Ans. I can't state at all definitely. The deed was drawn up in February, 1846; and I suppose it was a short time previous to that that they were reconciled.

(Complainant objects to any supposition of witness.)

Cross. 6. Who supported the family in Bulfinch street?

Ans. My father.

Cross. 7. Did your father and mother occupy the same chamber in Bulfinch street?

Ans. They did for a time—a short time; about four or five years.

Cross. 8. Whether or not your father, for a long time, was not troubled with a painful disease; and, if so, for what length of time, and what was it?

Ans. He was troubled for a long time with diabetes. What length of time I can't state.

Cross. 9. Did it commence after or before moving to Bulfinch street, and was it or not upon him during all your residence there?

Ans. I think it commenced after moving to Bulfinch street; some time after; not more than four years before we left, if as soon as that. This is merely matter of opinion. I don't pretend to know at what time he was first attacked by the disease.

Cross. 10. When you speak of the conversation of your father and mother in relation to the checks, do you mean to say that you give the precise language used by your father in your answers?

Ans. I give it as nearly as I can remember. I give the substance, and, as nearly as I can remember, the precise language.

Cross. 11. Will you swear that you give the language used by him?

153 Ans. I swear that I give it as near as I can remember. I give the substance of what he said.

Cross. 12. When did you first repeat the conversation of your father in regard to the checks, and to whom?

Ans. I think I first repeated it to Mr. Bartlett. I think it was in January, 1866. I mean Mr. Bartlett, the counsel in this case.

Cross. 13. Did you not repeat it to Mr. Crocker before repeating it to Mr. Bartlett?

Ans. I talked to Mr. Crocker about my mother's claim; but I never repeated to him the language used by my father in regard to the investment of the checks. I should have said I did not repeat it to him before repeating it to Mr. Bartlett. I think I did repeat it to him afterwards.

Cross. 14. Did you repeat to any one, and to whom and when, the conversation of your father, when ill and attended by you? Did you or not repeat it to your mother?

Ans. I repeated it to my sister Abby, and I think it was only to her that I repeated it. I do not remember that I repeated it to my mother.

Cross. 15. Will you please repeat the conversation of your father when the check of the trustees was first delivered to him.

Ans. He wished my mother to deliver it to him unconditionally, which she refused to do. There was considerable discussion upon the subject. He told her that she had no need of the money while she was in the house with him; that her wants were supplied by him; it would be safer with him; she would be likely to lose it. He finally told her he would invest it for her. On this condition, he gave him the check.

Cross. 16. Please state what was said by your father, using the words that he used, and also what was said by your mother, using the words that she used, as precisely as you can.

Ans. He asked her to give him the check which she had received from the trustee, Mr. Crocker. She objected, saying she wished the money. He said she had no need of the money; her wants were all supplied by him while she was in his house. She still refused to give him the check. He then told her he would invest it for her. On that condition she gave it to him.

Cross. 17. Was there anything said about the children in that connection?

154 Ans. My mother said that she owed it to the children to keep possession of the money.

Cross. 18. Did not your father, in reply to that remark of your mother, say he would keep it for her and the children, or words to that effect?

Ans. He said he would invest it for her. I do not remember his making any mention of the children.

Cross. 19. Is your recollection now so distinct that you are ready to swear that he did not mention the children in that connection or at that time?

Ans. I can only say that I do not remember his mentioning the children at that time. I can swear that when he spoke to me, during his illness in March, 1855, of the money which was the proceeds of the checks which he had received from my mother, he spoke of it as her money, and hers alone, without making any mention of the children. (Defendants' object to last paragraph of answer, from "I can swear," as irresponsive; that when the witness commenced to answer in relation to conversation with her father during his sickness, counsel for defendants requested examiner to caution witness that her answers should be confined to the matter of which she was interrogated. The plaintiff insisted that the witness should not be interrupted until the answer was completed, and the objection, if any, then taken, to the answer. At the request of counsel for defendants, the examiner now cautions the witness to confine her answers to the matters as to which she is interrogated.)

Cross. 20. Please give the precise words used by your father and by your mother when the second check was delivered to him, stating the dialogue, as far as you can.

Ans. My father asked my mother to deliver the check to him. She said she wished for the money. He told her that she had no need of money; that her wants were supplied by him while she was in his house. She still refused to give up the check, saying she owed it to the children to keep posession of the money. He promised that the money should be hers; that he would invest it for her if she would give it to him. On this condition she gave up the check. I do not remember his making any mention of the children.

Cross. 21. Give us the exact date of this conversation.

155 Ans. I don't speak of the second check of trustees. I speak of the second received after we went to the house in Bulfinch street. The three conversations I refer to occurred at the time the first three checks were received after we went to the house in Bulfinch street. The conversations occurred in January and July of 1847, and January, 1848. There was three checks received, each of which made a discussion. The conversation about the second check was in July, 1847, as near as I can remember.

Cross. 22. Have you any doubt about the date?

Ans. I think I can state with certainty that it took place in July, 1847.

Cross. 23. Will you now state the language used by your father upon the occasion of the delivery of the third check, giving the language used by him, as precisely as you can. Give the dialogue of the parties.

Ans. The same discussion took place; he asking the check of my mother, and he to receive it unconditionally. He requested the check of my mother unconditionally. She refused to give it to him. He again told her that she had no need of it; that he supplied her wants while she was in the house with him. He promised, if she would deliver the check to him, and all future checks, to have them invested for her benefit. On this condition she gave the check up to him.

Cross. 24. Did you understand the question, or request, that you should give, as nearly as you were able, the dialogue of the parties?

Ans. I did.

Cross. 25. State as precisely as you can the date of this third conversation.

Ans. In January, 1848.

Cross. 26. Have you any doubt that's the true date?

Ans. I have no doubt about it at all.

Cross. 27. Will you now repeat, giving the exact language of your father, what he said about the income, when he was ill and attended by you, as stated in your direct examination?

Ans. He told me was very ill. He could not live many weeks; possibly many days. There were some things which he should have attended to, which he had neglected. This neglect caused him a great deal of trouble. He had neglected to invest the money which he had
156 received from my mother. This was her money, and all she had. He had intended to invest it. The difficulty with him had been to find where he could invest it safely. It would not do to run any risk with it. It was all she would have.

Cross. 28. Did you make any memorandum or note of these conversations of your father, in regard to the checks and the income, at the time they occurred?

Ans. I did not. [They made a deep impression on me; and I think I have stated them exactly as he stated the facts to me.]

(Part in brackets objected to, as irresponsive, by defendants.)

Cross. 29. When did you last speak with your father?

Ans. On the morning of the day I left the house in Bulfinch street, 1860.

Cross. 30. Had you, from June, 1860, to the period of your father's death, any intercourse or communication of any kind with your father?

Ans. I never had.

Cross. 31. Did you not, with the other heirs-at-law, employ counsel, after your father's decease, to oppose the proof of your father's will?

(Objected to as incompetent.)

Ans. The heirs, not including my mother, employed counsel—I among them.

Cross. 32. Did not Mr. Crocker act as adviser of yourself and the heirs-at-law in that matter, and did you not advise with him?

Ans. He did act as their adviser, and I advised with him.

Cross. 33. Was there not a settlement made between the heirs-at-law, of whom you are one, and the executors of the will and those claiming under it? And if so, and in writing, please annex a copy of it to your answer.

(Objected to.)

Ans. There was one in writing. I have no copy of it. I can get one, and will, and produce it to the magistrate.

Cross. 34. Whether at the time of the making of that settlement you knew of the existence of this claim on the part of your mother against the estate, and whether there was any understanding among the heirs that it should not be mentioned till the settlement was completed?

(Objected to as incompetent.)

157 Ans. I knew of the claim at the time. There was no such understanding among the heirs. There was one of the parties with whom the subject of the claim was discussed, who said he did not wish to know anything about it. This party was not an heir.

Examination closes Wednesday, Sept. 26, 1866, 2 p. m.

THURSDAY, *Sept.* 27, 1866—9 a. m.—Examination read to witness, and by her subscribed in presence of Messrs. Bartlett and Huchins.

EMILY H. WALKER.

Subscribed in my presence September 27, 1866.

FRANCIS W. PALFREY,
Special Examiner.

158 UNITED STATES OF AMERICA:

I, Francis W. Palfrey, special examiner to take the testimony on the part of the complainant in the case of Eliza Walker, in equity, vs. Joseph S. Beal et al., in the United States circuit court, Massachusetts district, as by a certified copy of the order appointing me to act in said capacity hereto annexed appeareth, do certify that on the seventeenth day of September, in the year of our Lord eighteen hundred and sixty-six, I caused to appear before me Eliza Walker, a witness on behalf of herself, the complainant in the said cause; and on the twenty-fourth and twenty-fifth days of said September, I caused to appear before me Uriel Crocker, a witness on behalf of the complainant in the said cause; and on the twenty-fifth, twenty-sixth, and twenty-seventh days of said September I caused to appear before me Emily H. Walker, a witness on behalf of the claimant in said cause; and that they having been duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the cause for which their depositions were taken, their several answers to the interrogatories propounded to them were by me reduced to writing in their presence, and by me read over to them, and by them subscribed in my presence, and are hereto annexed, and that both parties were present by their respective counsel.

I further certify that the papers hereto annexed, marked F. W. P., and numbered respectively from 1 to 13, both inclusive, are the same papers that were produced at the taking of the said depositions, and that are therein referred to; and that the exhibit marked F. W. P., 13, is the copy referred to by the deponent Emily H. Walker, in her answer to the thirty-third cross-interrogatory.

In testimony whereof, I, the said special examiner, have hereunto subscribed my name, this ninth day of October, in the year of our Lord eighteen hundred and sixty-six.

FRANCIS W. PALFREY,
Special Examiner.

(Special examiner's fees, $80.00.)

158A UNITED STATES CIRCUIT COURT,
Massachusetts District, ss:

SEPTEMBER 12, 1866.

ELIZA WALKER
vs.
JOSEPH S. BEAL *et al.* } In equity.

Ordered, that Francis W. Palfrey, esq., be, and he hereby is appointed special examiner, to take the testimony on the part of the complainants in the above-entitled cause.

By the court,

JOHN G. STETSON, *Clerk pro tem.*

True copy:
Attest:

JOHN G. STETSON, *Clerk pro tem.*

159 F. W. P., 1.

Messrs. Uriel Crocker, Thomas Marshall, and J. B. Walker, trustees, in account with Eliza Walker.

DR.

1846.				
April 4.	For Rents of	Holden & Sylvester	$57.50	
	" "	A. C. Blinn	34.00	
May 2.	" "	Brewer & Co.	112.50	
" 19.	" "	Ebenezer Eastman	100.00	
July 2.	" "	Holden & Sylvester	112.50	
" 7.	" "	A. C. Blinn	100.00	
" 8.	To Interest,	Chas. M'Intire	111.00	
" 9.	" "	Chas. H. Johonnet	93.00	
" 15.	" "	Joseph Martin	120.00	
" 15.	" "	Lemuel Gilbert	222.00	
				$1,062.50

CR.

1846.			
Feb. 1.	By Cash paid Mutual Insurance Co., for Policies on Stores No. 12 and 13, on Lincoln street, for seven years	$80.00	
June 3.	By Cash paid Adams & Hammond, (repairs)	2.50	
July 1.	" Holden & Sylvester, (repairs)	5.48	
	" Recording Mortgages	2.50	
	By Commissions on $1,062.50. Am't rece'd, at 5 per cent	53.12	
	By Balance	918.90	
			$1,062.50

E. E., and settled, Sept. 1, 1846; and I hereby acknowledge to have received the above balance of Uriel Crocker, Trustee.

WILLIAM J. WALKER,
Per order.

160 *F. W. P.*, 2.

TREMONT BANK. *A.*

1,373 Dolls., 13 Cts. BOSTON, July 10th, 1854.

Pay to Mrs. Eliza Walker, or Bearer, Thirteen Hundred and Seventy-Three Dollars, $\frac{13}{100}$.

To the Cashier.

No. URIEL CROCKER.

F. W. P., 3.

1,186 Dolls., 66 Cts. BOSTON, Jan. 26, 1855.

TREMONT BANK. *A.*

Pay to Mrs. Eliza Walker, or Bearer, Eleven Hundred Eighty-Six Dollars, $\frac{66}{100}$.

No. URIEL CROCKER.

F. W. P., 4.

1,470 Dolls., 44 Cts. BOSTON, July 12th, 1855.

TREMONT BANK. *A.*

Pay to Mrs. Eliza Walker, or Bearer, Fourteen Hundred and Seventy Dollars, $\frac{44}{100}$.

No. URIEL CROCKER.

F. W. P., 5.

1,289 Dolls., 35 Cts. BOSTON, Jan. 11th, 1856.

W. J. W. TREMONT BANK. *A.*

Pay to Mrs. Eliza Walker, or Bearer, Twelve Hundred Eighty-Nine Dollars, $\frac{35}{100}$.

No. URIEL CROCKER.

161 *F. W. P.*, 6.

Alt. MARKET BANK.

1,474 Dolls., 15 Cts. BOSTON, July 8th, 1856.

Pay to Mrs. Eliza Walker, or Bearer, Fourteen Hundred and Seventy-Four Dollars, $\frac{15}{100}$.

To the Cashier. URIEL CROCKER.

F. W. P., 7.

Atc. MARKET BANK.

1,254 Dolls., 21 Cts. BOSTON, Jan. 3d, 1857.

Pay to Mrs. Eliza Walker, or Bearer, Twelve Hundred and Fifty-Four Dollars, $\frac{31}{100}$.

To the Cashier. URIEL CROCKER.

F. W. P., 8.

MARKET BANK.

1,246 Dolls., 46 Cts. *Atc.* BOSTON, Jan. 5th, 1858.

Pay to Mrs. Eliza Walker, or Bearer, Twelve Hundred and Forty-Six Dollars, $\frac{46}{100}$.

To the Cashier. URIEL CROCKER.

F. W. P., 9.

MARKET BANK.

1,461 Dolls., 80 Cts. *Atc.* BOSTON, July 3d, 1858.

Pay to Uriel Crocker, or Bearer, Fourteen Hundred Sixty-One Dollars, $\frac{80}{100}$.

No. 112. To the Casher. URIEL CROCKER.

162 *F. W. P.*, 10.

Atc. MARKET BANK.

1,280 Dolls., 17 Cts. BOSTON, Jan. 6th, 1859.

Pay to Uriel Crocker, or Bearer, Twelve Hundred and Eighty Dollars, $\frac{17}{100}$.

No. 150. To the Cashier. URIEL CROCKER.

F. W. P., 11.

MARKET BANK. *Atc.*

1,429 Dolls., 13 Cts. BOSTON, July 9th, 1859.

Pay to Uriel Crocker, or Bearer, Fourteen Hundred Twenty-Nine Dollars, $\frac{13}{100}$.

No. 193. To the Cashier. URIEL CROCKER.

F. W. P., 12.

MARKET BANK.

1,341 Dolls., 35 Cts. BOSTON, Jan 9th, 1860.

Pay to Uriel Crocker, or Bearer, Thirteen Hundred Forty-One Dollars, $\frac{35}{100}$.

No. 235. To the Cashier. URIEL CROCKER.

163 F. W. P., 13.

5-cent U. S. Int. Rev. Stamp.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME. KNOW YE,—

That whereas, William J. Walker, late of the City of Newport, in the State of Rhode Island, deceased, in his life time made and executed an instrument purporting to be his last Will and Testament, bearing date the second day of October, A. D., eighteen hundred and sixty-three; and the said William

J. Walker died at said Newport, on the second day of April, A. D., eighteen hundred and sixty-five; and the persons who are entitled to his estate, under the statutes regulating the descent and distribution of intestate estates, are his widow, Eliza Walker, and his daughters, Frances W. Ladd (wife of Alfred Ladd), Emily Walker, Catharine W. Shepherd (wife of Samuel C. Shepherd), Abbie J. Walker, and his son, Edward J. Walker; and John B. Walker, Elizabeth H. Walker, Maria B. Walker, Augustin E. Walker, and Joseph H. Walker (children of Joseph H. Walker, deceased, who was a son of said William J. Walker), and are minors. And whereas, a controversy has arisen and exists, upon said instrument, and the validity thereof, between the aforesaid persons entitled to said estate as intestate, and the parties claiming as residuary legatees under said instrument,—to wit: The Massachusetts Institute of Technology, the Boston Society of Natural History, the Trustees of Amherst College, and the Trustees of the Tufts College.

And whereas, Joseph S. Beal, Alexander S. Wheeler, Morrill Wyman, Jeffries Wyman, John R. Brewer, Thomas T. Bouvè and Benjamin Finch, the persons named as Executors in said instrument, and the said persons entitled to the estate of the said William J. Walker, as intestate, and the said parties claiming as residuary legatees have, with the consent of the Judge of the Court of Probate, of the City of Newport,—the same being the Court having jurisdiction of said will,—adjusted the said controversy by compromise, in accordance with the provisions of the statute in such case, made and provided in the manner hereinafter set forth, the interests of the said John B. Walker, Maria B. Walker, Elizabeth H. Walker, Augustin E. Walker, and Joseph H. Walker, minors,
164 being represented by James G. Foster, appointed by said Court of Probate Guardian *ad litem* for that purpose.

5-cent U. S. Int. Rev. Stamp.

Now, therefore, it is hereby agreed, with the consent of the Honorable Samuel Sterne, Judge of the Court of Probate of the City of Newport, by the said Joseph S. Beal, Alexander S. Wheeler, Morrill Wyman, Jeffries Wyman, John R. Brewer, Thomas T. Bouvè and Benjamin Finch, the persons named as Executors in said instrument, purporting to be the last will and testament of the said William J. Walker, and by the said Eliza Walker, Frances W. Ladd, and Alfred Ladd, (husband of the said Frances, in her right,) Emily Walker, Catharine W. Shepherd, and Samuel C. Shepherd, (husband of the said Catharine, in her right,) Abbie J. Walker and Edward J. Walker; and by the said John B. Walker, Maria B. Walker, Elizabeth H. Walker, Augustin E. Walker, and Joseph H. Walker, minors (by James G. Foster, Guardian *ad litem*, as aforesaid); and by the said Massachusetts Institute of Technology, the Boston Society of Natural History, the Trustees of the Tufts College, and the Trustees of Amherst College, that the aforesaid controversy be adjusted, and a compromise thereof made, in the manner and upon the terms following, that is to say: that the provisions of the thirty-fourth item of said instrument, purporting to be the last will and testament of the said William J. Walker, be so far modified, that out of the estate and property therein given, devised and bequeathed, to the parties therein named, to wit,—The Massachusetts Institute of Technology, the Boston Society of Natural History, Tufts College, and Amherst College,—there shall be first paid to the said Frances W. Ladd, Emily Walker, Catharine W. Shepherd, Abbie J. Walker, and Edward J. Walker, each the sum of fifty thousand dollars, and to the said James G. Foster, Guardian of the minor children of Joseph H. Walker, deceased, the sum of fifty thousand dollars; the sum of eight thousand three hundred and thirty-three $\frac{33}{100}$

dollars thereof to be by him paid to Ann Maria Walker, mother of the said minors; and the balance to be equally divided between the said minors, and that said sums, amounting in the whole to three hundred thousand dollars, be paid free of all Government and other taxes and duties whatever, so that the whole amount thereof shall be received and realized by said parties; and that all the rest, residue and remainder of
165 the estate of the said William J. Walker, go to and be divided between the said Massachusetts Institute of Technology, the Boston Society of Natural History, the Trustees of the Tufts College, and the Trustees of Amherst College, one-fourth part thereof to each of said institutions, as provided by said thirty-fourth item of said instrument purporting to be the last will and testament of the said William J. Walker; and that said instrument be admitted to Probate and have effect, and the estate of the said William J. Walker be administered and disposed of, according to the provisions thereof as modified by this agreement of compromise.

5-cent U. S. Int. Rev. Stamp.

In Witness Whereof, the said Joseph S. Beal, Alexander S. Wheeler, Morrill Wyman, Jeffries Wyman, John R. Brewer, Thomas T. Bouvè, and Benjamin Finch, and the said Eliza Walker, Frances W. Ladd, Alfred Ladd, Emily Walker, Catharine W. Shepherd, Samuel C. Shepherd, Abbie J. Walker, Edward J. Walker, and the said minors, John B. Walker, Maria B. Walker, Elizabeth H. Walker, Augustin E. Walker, and Joseph H. Walker, by the said James G. Foster, their Guardian *ad litem;* and the Massachusetts Institute of Technology, by George T. Bigelow, William B. Rodgers, and James M. Beebe, a committee thereto duly authorized; and the Boston Society of Natural History, by William B. Rogers and Augustus A. Gould, a committee thereto duly authorized; and the Trustees of the Tufts College, by Alonzo A. Miner, Thomas A. Goddard, and Charles Robinson, Jr., a committee thereto duly authorized; and the Trustees of Amherst College, by William A. Stearns, Alpheus Hardy, and Henry Edwards, a committee thereto duly authorized; have hereto set their hands, this seventeenth day of June, in the year of our Lord, eighteen hundred and sixty-five.

In the presence of—

5-cent U. S. Int. Rev. Stamp.

A. J. Bailey, to J. S. B.
U. Crocker, to A. S. W.
Henry A. Clapp, to M. W. and J. W.
C. T. Brewer, to J. R. B.
Nath. Curtis, to T. T. B.
Henry A. Clapp, to B. F.
166 Uriel Crocker, witness to E. W., T. W. L., A. L., E. W., C. W. S., S. C. S. A. J. W. and E. J. W.

5-cent U. S. Int. Rev. Stamp.

Joseph S. Beal.
A. S. Wheeler.
Morrill Wyman.
J. Wyman.
John R. Brewer.
Thos. T. Bouve.
Benj'n Finch.
Eliza Walker.
Frances W. Ladd.
Alfred Ladd.
Emily Walker.
Catharine W. Shepherd.
Samuel C. Shepherd.
Abby J. Walker.
Edward J. Walker.
John B. Walker.
Maria B. Walker.
Elizabeth H. Walker.

H. A. Clapp, to J. G. F.

T. Metcalf,
to G. T. B.
I. D. Runkle, to
Wm. Whitman, to

I. D. Runkle, to W. B. R.
E. C. Gould, to A. A. G.

C. T. Duncklee,
witness to A. A. M.,
T. A. G. and C. R., Jr.

Chas. Arnold, to
W. A. S., A. H.
and H. E.

Augustin E. Walker, and
Joseph H. Walker,
by James G. Foster, their
Guardian *ad litem*.
Massachusetts Institute of Technology,
by George Tyler Bigelow
William B. Rogers.
Jas. M. Beebe.
Boston Soc. of Nat. History, by
William B. Rogers.
Augustus A. Gould.
The Trustees of Tufts College.
by A. A. Miner.
Thos. A. Goddard.
Chas. Robinson, Jr.
Trustees of Amherst College, by
W. A. Stearns.
Alpheus Hardy.
Henry Edwards.

167 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Eliza Walker, in equity, vs. Joseph S. Beal et al., in this court determined.

In testimony whereof, I hereunto set my hand, and affix the seal of said court, at Boston, this third day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] JOHN G. STETSON, *Clerk.*

[5-ct. int. rev. stamp, cancelled. J. G. S. Dec. 9, 1868.]

168 Know all men by these presents, that we, Joseph S. Beal, of Kingston, and Alexander S. Wheeler, of Boston, both in the State of Massachusetts, as we are duly constituted executors, in said State of Massachusetts, of the last will and testament of William J. Walker, late of Newport, in the State of Rhode Island, physician, (deceased,) as principals, and James H. Beal and Alpheus Hardy, of said Boston, as sureties, are held and firmly bound unto Eliza Walker, of the city and State of New York, in the sum of one hundred thousand dollars, to be paid to the said Eliza Walker, or her legal representatives; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the twenty-fifth day of November, A. D. 1868.

Whereas in a suit in equity, in the United States circuit court for the first circuit and district of Massachusetts, wherein the said Eliza Walker is complainant, and the said Joseph S. Beal and Alexander S.
169 Wheeler, executors, are defendants, the said defendants have appealed from the final decree therein to the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such, that if the said Joseph S. Beal and Alexander S. Wheeler, executors, shall and do

diligently prosecute such appeal, and shall and do pay all costs and damages that may be awarded against them thereon, then this obligation to be void; otherwise to be and remain in full force and virtue.

JOSEPH S. BEAL. [L. S.]
A. S. WHEELER. [L. S.]
JAS. H. BEAL. [L. S.]
ALPHEUS HARDY. [L. S.]

In the presence of—
H. C. HUTCHINS.

Sureties approved:

JOHN LOWELL, *District Judge.*

A true copy of the bond taken by the judge at the time of
170 allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dist.

171 Know all men by these presents, that I, Osmyn Brewster, of Boston, in the county of Suffolk, and State of Massachusetts, are held and firmly bound unto Joseph S. Beal, of Kingston, in said State of Massachusetts, and Alexander S. Wheeler, of said Boston, as they are the duly-constituted executors of the last will and testament of William J. Walker, late of Newport, in the State of Rhode Island, deceased, in the full and just sum of one thousand dollars, to be paid to the said Joseph S. Beal and A. S. Wheeler, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the twenty-third day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately at a circuit court of the United States, held at said Boston, for the district of Massachusetts, being the October term of said court for the year 1868, in a suit in equity depending in said court between Eliza Walker, of the city of New York, in the State of New York, and the said Joseph S. Beal and A. S. Wheeler, as they are executors as aforesaid, decree was rendered overruling the exceptions of complainants to the master's report made in said cause, and the said Eliza Walker having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and a citation directed to the said Joseph S. Beal and A. S. Wheeler, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said Eliza Walker shall prosecute her said appeal to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

OSMYN BREWSTER. [L. S.]

Signed, sealed, and delivered in presence of—
GEO. B. HANOVER.

Approved: JOHN LOWELL,
District Judge.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dist.

18 Part 1 ~

Supreme Court of the United States.

Dec. T. 1869. No. 387.

ELIZA WALKER *vs.* JOSEPH S. BEAL ET AL.,

Executors of William J. Walker.

BRIEF OF COMPLAINANT'S COUNSEL.

This is a bill in equity to charge the estate of William J. Walker in the hands of his executors, with a trust in favor of Mrs. Walker.

The trust arose out of the following facts:

In the month of September, 1845, Doctor Walker and the complainant, his wife, resided in Charlestown, Mass.

In that month, without any justifying cause, he compelled her and her two older children to leave his house. He had before treated her with extreme cruelty, including personal violence: so that she then had cause for a decree of divorce from bed and board, and for alimony proportioned to his estate.

Emily H. Walker, pp. 101–2, Int. 1 to 9.

She applied to counsel to take legal proceedings against him. He does not appear to have, at any time, denied her right to such a decree, but he applied to his friend Mr. Crocker for advice and assistance, and requested him to confer with counsel.

Crocker, pp. 90–91, Int. 1 to 5.

The result of the conference was a recommendation that he should settle on Mrs. Walker the sum of $50,000, — a very large part of which he had actually received from her father's estate, and being himself a man of fortune, — and that articles of separation should be drawn and executed. And this was finally assented to by the parties, and the articles were executed, and are annexed to the bill. (Exhibit C, p. 7.)

Crocker, pp. 90–91.

By these articles the agreed amount of property was transferred to trustees in trust, to pay its income to Mrs. Walker *during her life*, UPON CONDITION that she should release her possibility of dower in any and all real estate he might sell during his lifetime; and if she should survive him, that she should release her right of dower in his estate. The settlement, therefore, was made by him, and accepted by her, not merely in lieu of alimony which she could have had decreed to her out of his then large estate (see Crocker, p. 83. ans. 4), and as being about the amount he had received in her right from her father's estate, but in place of her dower. And, therefore, it was expressly stipulated, that if the parties should at any time or times thereafter cohabit together as heretofore, these presents shall not be thereby rendered invalid; but the trusts herein contained shall be executed (subject to the conditions as to her release of dower) in like manner as if the parties should live separate; (p. 20, last paragraph). The Trustees covenanted to indemnify the husband from all payment of alimony thereafter.

The separation having continued some months after the execution of the articles, Mrs. Walker returned to her husband at his request, as he expressed it, "as a visitor or guest." (Crocker, p. 92, Int. 9.)

While so living together the transactions took place out of which arose the trusts on which this bill is founded.

Those transactions, as proved by the evidence in the record, make it clear that the husband took from his wife her income, which was her separate estate, under an express agreement to invest it for her use, and made himself her trustee for that purpose.

The evidence is clear, positive, and without a shadow of contradiction, and is as follows: —

In September, 1846, Doctor Walker applied to Mr. Crocker, the acting trustee, with an order from Mrs. Walker, and what took place is thus stated by Mr. Crocker (p. 91, Ans. 5 and 6).

"After the trust deed was executed, I remarked to the Doctor that Mrs. Walker would have no income from the property for some six months to come; that she probably owed some money; and that I should advise him to give her a thousand dollars for that purpose, which was done."

"When I made the first payment, or was about to make the first payment of the income of the trust property, which was in September, 1846, — the September following, — he came to collect payment, with an order from Mrs. Walker. I paid him the money, although I objected to it, — he stating that he had advised Mrs. Walker to have him invest this amount, — the amount of the income, — with the thousand dollars she hadn't used, for her benefit; and if she should not need it, it would then go to her children, and that she had agreed to it." (The settled account is p. 110.)

Doctor and Mrs. Walker returned from Plymouth in October, 1846 (p. 91, Ans. 8.)

In January following, Mrs. Walker received from Mr. Crocker a check for a half year's income.

Miss Emily Walker thus testifies (p. 102, Ans. 10–11.):—

"I can remember my mother's receiving the first check after her return to Boston, which was in January. My father wished her to give him the check unconditionally. She refused, and kept possession of it for three or four days, during which time I heard discussion constantly upon the subject of the check. Finally she gave it up to him. He had told her previously that she had no need of the money, — all her wants were provided for while she was in the house with him; that he would invest the money for her; that it would be safer in his hands than in hers."

"I don't know that I understand the question; but he promised to invest the money at the time he received it, for her."

So of the second and third occasions (p. 102–3, Ans. 12–16).

"There was the same discussion. Father desiring to receive the check unconditionally, as before; mother refusing to give it up."

"He again told her that she had no use for the money while she was with him. That he would provide for her wants. That he would invest it for her."

"She said that she would not give it up to him excepting upon condition that he invested it for her. On this condition she gave it to him."

"I was more frequently present than not. She gave them to my father."

"There was some discussion when she delivered him the next check — the third. He wished to receive the check, as before, unconditionally. The discussion ended by his promising to invest this check and all others he should receive from her, for her benefit. After this I heard no further discussion upon her delivering, — when she delivered him the checks in future, — after that."

To this is to be added her father's statements to the same witness during what he believed to be his last illness (p. 103, Ans. 18–19.)

"He said there were some things which he had neglected to attend to. This neglect troubled him a great deal. He had neglected, he said, to invest the money which he had received from my mother, which she had received from the trustee, Mr. Crocker, — that he had intended to invest it. The difficulty with him had been to find a safe investment. It was her money and all she had. It would not do to risk anything with it. This he said to me not once, but many times."

Also his statement to Mr. Crocker (p. 91, Ans. 7).

"He used to talk about the income frequently; but some four or five years afterwards, I should say, he came to me, and asked me if I had paid the income to Mrs. Walker, and if I had not. And when informed I had not, he wished me to defer it for a few days, as all was not right at the house, and he feared, if I paid it over, she would not be willing to have it invested for her as he wished. Some few days afterwards he came and

stated that all was right, and he wished I would go up and pay it, as he had a good chance to invest it, — which I did."

Exhibit B (Record, p. 7), a voucher taken by Dr. Walker from his wife, March 27, 1847, and found among his papers after his decease (Ans., p. 15), is a distinct written recognition of the trust, and that it remained unimpaired, and that the future income was to be received under it.

I.

In this condition of the proofs, without any evidence offered by the Defendants to control or vary the same, Plaintiffs submit the following propositions of law — as entitling them to have that part of the decree below, which affirms the existence and validity of the alleged trust, confirmed.

1st. It is settled law that such a trust, either with or without the covenant of the trustees to indemnify the husband against the wife's debts, is founded on valuable consideration; is valid, (*a*) and is not terminated by the subsequent cohabitation of the parties (*b*).

(*a.*) *Compton* vs. *Collinson*, 2 *Brown's C. C.*, 377.
Worrall *vs.* Jacob, 3 Merivale, 266.
Jee vs. *Thurlow*, 2 *B. & C.*, 546.
Webster vs. *Webster*, 1 *Sm. & Gif.*, 489; *S. C.*, 23 *Eng. Law & Eq.*, 216; *S. C.*, *before Vice-Chancellor Shadwell*, 4 *De G. M. & G.*, 489; *and* 17 *Eng. Law & Eq.*, 278.
Rundle vs. *Gould*, 8 *El. & Bl.*, 457.
Wallis *vs.* Stone, 9 Cal., 479.
Dellinger's appeal, 35 Pa., 357.
Gaines *vs.* Poor, 3 Metcalf (Ky.). 503.

(*b.*) Wilson *vs.* Mushett, 3 B. & Ad., 742.
Bell, Husband and Wife, 525–541.

The validity of such trust is seemingly conceded in Massachusetts, in Albee *vs.* Wyman, 10 Gray 222–227. But if this were otherwise and if the Courts of Massachusetts had decided

that such trusts are against public policy although the Court would give the views of those Courts due consideration, yet this Court administers the equity law recognized by the Constitution, and not the mere local law of any State.

Neves *vs.* Scott, 13 How., 262, and cases there referred to.

The theory that articles of separation are repugnant to the policy of the common law, is carefully discussed and seemingly disposed of in England by a recent judgement of Lord Westbury in Hunt *vs.* Hunt. (5 Law Times Rep. 778.)

2d. It is clear that a husband may be a trustee for his wife. All that is necessary is that he should agree to become so, and although the agreement be made between him and her alone, the trust will attach upon him in the same manner and under the same circumstances that it would if he were a mere stranger.

2 Story's Eq. § 1380.
Neves *vs.* Scott, 9 How. 212.

Such agreement imposes the character of a trustee on the husband, even when there is no valuable consideration, and it is made concerning property belonging to him. A *fortiori* when there is a valuable consideration, and it is made concerning her separate property.

2 *Kent's Com.* 163, *and cases cited.*
Woodward *vs.* Woodward, 8 Law Times, R. (N. S.) 749.

In *Grant* vs. *Grant*, 12 *Law Times R. (N. S.)*, 721, the Master of the Rolls said:

"It has been very properly observed on both sides in this case that, in cases of this description in equity, the question is merely one of evidence, and that it cannot be disputed that a husband may be a trustee for his wife. That is perfectly settled; and the only question, therefore, is whether he has constituted himself such a trustee or not? . . . . . The mere question here is, whether the husband has used words which are equivalent to a declaration of trust. In the first place, those words need not be in writing: that is quite settled by the authorities. They must be clear, unequivocal, and irrevo-

cable; but it is not necessary to use any technical words. It is not necessary to say, 'I hold the property in trust for you.' It is not necessary to say, 'I hold the same for you for your separate use.' Any words that show that the donor means, at the time he speaks, to divest himself of all beneficial interest in the property, are, in my opinion, sufficient for the purpose of creating the trust. I think it is also sufficient for the purpose of showing that the trust has been created, if he afterwards states that he has so created the trust, though there was no witness except the donee present at the time the trust was created. For instance, A. has £1000 Consols standing in his name; in the presence of witnesses, or in writing (it does not matter which), he says to B., 'I hereby give you £1000 Consols now standing in my name in the books of the Governor and Company of the Bank of England.' In my opinion that would create A. a trustee for B, and the gift would be complete. I think that is what is established in *Ex parte Pye*, 18 Ves. jun. 140, on which case I have had to comment very often when deciding others. I am of opinion that it would be just the same if A. were asked by C., 'Have you given the stock standing in your name to B.?' and A. said in reply, 'Yes, I have given it to B., and it is his property.' I am also of opinion that if, without being asked, he has voluntarily said, 'I have given the £1000 Consols standing in my name in the books of the Governor and Company of the Bank of England to B.' that would constitute a valid declaration of trust of the stock."

3d. The objection that the suit should have been brought in Rhode Island is untenable.

The scope of the bill is to charge the estate of the defendant's testator with a trust, and to procure a decree in favor of the complainant as a creditor, for that sum of money which may be found due to her on an account of such trust.

The contracts out of which the trust arose were all made in Massachusetts, between persons then domiciled there.

The defendants themselves appeal to the laws of Massachusetts as governing the relations of the parties and their contracts (Ans. p. 14). It is the settled law of Massachusetts, where this will was proved, that the assets received and inventoried by the executors here, are liable to the claims of citizens of Massachu-

setts; and, if the estate be solvent, they are to be paid in full here.

Richards *vs.* Dutch, 8 Mass. R. 506.
Dawes *vs.* Heard, 3 Pick. 127.
Revised Statutes, ch. 70, § 21, 22,
Gen. Statutes, ch. 101, § 28, 39.

And citizens of other States have the same right to enforce payment of their claims here that citizens of Massachusetts have.

In Dawes *vs* Head, 3 Pick. 145, Mr. Chief Justice Parker said: "Whether citizens of other States, claiming payment of their debts of the administrator here, are to be put upon the same footing with citizens of Massachusetts, by virtue of the privileges and immunities secured to them by the Constitution of the United States, is a point which we do not now decide. But *without doubt* the Courts of the United States, having full equity powers, would enforce payment on the principles above stated, where there is no suggestion of the insolvency of the estate."

That such is the law of this Court is clear.

The Circuit Courts of the United States, as courts of equity, have jurisdiction over executors and administrators, when the parties are citizens of different States.

Greene's Adr. *vs.* Creighton, 23 Howard, 90.

Upon this ground Mr. Justice Story decided, after full examination of the authorities, that a court of equity would even decree distribution, in Massachusetts, to a legatee who was a citizen of Rhode Island, unless the ancillary administrator here should show that injustice would thereby be done.

Harvey vs. *Richards*, 1 *Mason*, 381.

4th. If the original trust indenture were to be held invalid as against the policy of the common law, or as rendered so by subsequent cohabitation or because executed without valuable consideration, still the trusts to be enforced by this bill are valid, since: —

(*a.*) Each of the sums which are claimed to be the subject of this trust were, *with the consent of the husband*, during the re-cohabitation of the parties, paid by the Trustees to the wife.

(*b.*) If, then, the original trust was void, the law assumes that this was known to the husband, and the payments by the Trustees to the wife with his assent, must be construed to be a gift to the wife.

(*c.*) The funds thus paid to the wife, while in her hands were, by a subsequent agreement, placed by her in the hands of her husband in trust, to be invested for her. Such a trust, whether the funds were originally derived from the bounty of the husband or from her separate estate, will be upheld by a Court of Equity.— (See Grant *vs.* Grant, and cases above cited.)

5th. At the hearing below, Defendant set up two further grounds of defence. viz.: (1st) that if Complainants ever had any claim, she is precluded by the Indenture of compromise (Record p. 112), made between the executors and the heirs at law to which her name is affixed. (2d) Or if this be not so, yet acceptance of the provisions of the will of her husband (Record p. 16), is inconsistent with the claim now made, to which we answer:

That no such grounds of defence are set up by the answer, and consequently none such are open to Defendants.

(Foster *vs.* Goddard, 1 Black, 506–518. Daniels Ch. P. Vol. 1, p. 726.)

As to the Indenture of compromise, it shows an adjustment merely between the heirs at law and the parties claiming as residuary legatees under the Indenture, and concerned only the residue of the estate, after payment of all debts, liabilities, and legacies. Mr. Walker, who was a formal party to it, received nothing under it, and joined *in the release* of the residue only after payment of all claims on the estate, including of course her own.

As to the effect of the supposed acceptance of the provisions of the will, there is no proof of such acceptance, and if there were, how can her consent to receive a sum expressly in addition to her income under the trust deed, be inconsistent with, or the waiver of, another trust under which the husband received to be invested, the separate property of the wife.

II.

The remaining questions in the cause are the correctness of the rulings of the Court below, upon the several exceptions of the parties to the Master's Report.

AS TO PLAINTIFF'S EXCEPTIONS.

FIRST EXCEPTION. (p. 83 — 4.)

The Master has found, (Record, p. 66,) that the testator paid the sum of $2400 upon the request and on the account of Complainant, and is entitled to be credited therefor. Complainant insists that the sum should be $1500.

The question turns on the inference to be drawn from the following paper (Exhibit B, Record, p. 97,) construed in reference to the surrounding circumstances.

Exhibit B.

"Out of the sum of 2,087 dollars and 97 cents, which I have received of the Trustees, as specified in their two first accounts, I have refunded to my husband $1500, fifteen hundred dollars, being part payment of 24 hundred dollars which he gave at my request, and on my account, in equal proportion to my two sons, John Brooks and Joseph Hurd; and I agree that the like sum of 12 hundred dollars shall be given successively to my other children, Frances Emily, Kate Edward, and Abby J. Walker, in such manner as may be agreed upon between me and my husband, as far as the income or the trust property will allow, reserving to myself the right to use as much of said income as I may need for private expenses and any charitable objects I may wish to favor."

ELIZA H. WALKER.

BOSTON, March 27, 1847.

Those circumstances are as follows:

At its date, testator had in his hands, belonging to his wife, to be invested for her, not only the $2087.97, but the farther sum of $1000 which had been previously given her by testator, and afterwards placed by her in his hands for investment. (Crocker, Record, p. 91. Master's Report, p. 66.) These sums formed the first two items of cash charged testator in the Master's Report, (p. 68.)

Exhibit B recites that the father, at the request of the mother, had given $2400 to two of their children — and that out of the sum of $2087.97, received of the Trustees, she had refunded to her husband $1500.

As the case shows that she received from the Trustees nothing but their checks, which she immediately passed to her husband, the document was intended by the husband as a voucher in discharge *pro tanto* of the trust fund, consisting of the checks passed to him for investment.

The question then is, whether, under these circumstances, with means of the wife in his hands to satisfy the whole $2400 thus advanced to their children, the inference is, that it was their joint intention to leave her in debt to her husband for the balance of the $2400, *and that the husband, instead of paying himself in full, should go on and invest the balance of the moneys in his hands for her use, without any suggestion on the face of the paper that she was to pay the balance of the* $2400, thereafter and how, or is it the just intendment that the husband consented that balance should be deemed his share of the contribution to their children; and on this point it is to be noted, that although said paper B contains no provision or promise in relation to the payment of this balance, yet it does contain other promises from her to him.

SECOND EXCEPTION. (Rec. p. 84.)

This exception involves several particulars.

1st. The question arises, *within what time* it is the duty of a trustee to make investment of trust funds. The Master has allowed seventy-five days. (Record p. 68.) The complainant, on the authority of Barney *vs.* Saunders, 16 Howard, 535, and

the practice of the testator in reference to his own investments, submits that thirty days is the proper period. — See the constancy and rapidity of his investments. (Schedules Record, pp. 71 to 81.)

2d. The question is, whether the interest should have been compounded annually or semi-annually.

The Master disallowed semi-annual rests, "because severe."

(1.) It is submitted that in a case for "severe treatment," the interest is to be compounded semi-annually.

This is asserted by the highest authorities.

Barney *vs.* Saunders, 16 How, 535.
Roppoel *vs.* Boem, 11 Ves. 62.
Same *vs.* Same, 13 Ves. 407, 590.
Fay *vs.* Howe, 1 Pick. 528.
Jennison *vs.* Hapgood, 10 Pick. 104.
Boynton *vs.* Dyer, 18 Pick. 1.

(2.) This is a case for "severe treatment."

This testator designedly obtained from his wife the income of property which belonged to her by a title which the Court has decreed to be perfect, upon a solemn promise to invest it for her benefit.

It is manifest —

1st. That he utterly neglected to keep this promise. There is no excuse arising from inability or even from inattention. He was a person extremely well informed as to the care and investment of moneys. His own investments prove that, as they also do his constant attention to the subject.

2d. He mingled these trust moneys with his own funds, and used them as his own, in the prompt and careful and profitable investments which he made in his own name, and on his own account.

3 d He acted throughout, not only neglectfully of his trust, *but in actual fraud of it;* treating the money as his own in every way, and by every act which could assert his title in opposition to the trust, while at the same time he was receiving, every six months, interest, under and by virtue of the trust aris-

ing from his express promises, and that confidence arising from those promises which a Court of Equity holds to be absolutely sacred.

He mingled the moneys with his own, as if they belonged to himself. — Williams *vs.* Powell, 10 Law & Eq., R. 225; Docker *vs.* Somes, 2 Myl. & R. 635.

He used them, as his bank accounts show, as his own.

He kept no accounts of the trust, still less did he ever render any.

He lived in utter disregard of the trust. "Intentionally and persistently," (Master's Report, p. 67). He died, and left a will which disregarded it, and, so far as was in his power, precluded its assertion.

If these things are true, can a Court of Equity, the guardian of trusts, hesitate to say this is a case for "severe treatment"?

The details of his conduct, as proved, show a dishonest intent.

At one time, he professed to Mr. Crocker a fear that if the income should be paid to her, she would not be willing to have it invested for her benefit. Soon after, he desired Mr. Crocker to pay her the money, as it was all right, and he wished it paid *because he had a good chance to invest it.* (Record, pp. 91–97.)

This was a false pretence. He made no such investment.

When dangerously sick in 1855, he professed regret that he had not made the investments he admitted he was bound to make. The excuse he offered to his daughter was, that he had not been able to find a safe investment.

The law allows, the Supreme Court (in Barney *vs.* Saunders), say thirty days, the Master says seventy-five days, to find and make such an investment. At the end of *nine years*, his only excuse was, that he had not been able to find a safe investment for the first $1500 he received, nor for any part of the sums which during the nine years he had received each six months subsequently. (Record, pp. 103, 108.)

He lived ten years longer, was constantly making large investments on his own account, in which he included these very trust moneys, treating them as his own, but not one dollar on account of the trust.

Thus while the trust was clear, as the Court has found, and when very ill, as his own conscience forced him to admit, and while he was each six months obtaining the income of his wife, on the faith that he would perform it, yet he acted in total disregard of its plain obligations, doubtless relying on his ability, in some way, finally to render those obligations nugatory. The third and fourth exceptions were sustained by the Court below.

FIFTH EXCEPTION. (Record, p. 84.)

It is a just and natural presumption that a party originally intended to do what he in fact does, unless there is something to show a change of purpose. This party received and appropriated these moneys to his own use from 1846 to 1865, without any attempt to invest one dollar of them. Upon what ground can it be doubted that he intended, when he received those moneys, to do with them what he actually did?

SIXTH EXCEPTION. (Record, p. 84.)

We respectfully submit that a trustee is not to be allowed compensation when he has done nothing in the execution of his trust, and has been guilty of the grossest abuses of it, and his representatives have denied its existence and forced the *cestui que trust* to establish it by this suit. Lamb's appeal, 58 Penn. State R., 142.

SEVENTH EXCEPTION. Record, p. 84.

The testator's bank book shows that his wife's money did go into the investments which we have proved he made; and if the Master has rightly stated his inability to trace the proportion of the large profits which were derived by the testator from this misuse of trust money, this furnishes a strong reason why the most stringent rules as to compound interest should be applied to so flagrant a case.

RESPONDENT'S EXCEPTIONS.

The 3d, 4th and 7th of these exceptions (Record, p. 85,) are new and not founded on objections filed before the Master, and

so are incompetent. Byington *vs.* Wood, 1 Paige. Adam's Eq. 384. 1 How, 322. But if this were not so, then as to—

DEFT.'s. FIRST AND THIRD EXCEPTIONS. (Rec. p. 85.)

The answers to these have been indicated.

We add only that the position that there was no duty to invest, but only to hold subject to her draft, is directly met by the proofs (Record, pp. 91, 102, 117), and finds no support in Exhibit B.

The reservation of the power to use the income of the trust property, so far as she might choose to do so, for private expenses and charity, could interfere with its investment by him, under his express undertaking, only so far as she might exercise that power, and thus prevent him from investing. *But she did not exercise it to the extent of one dollar. All was delivered to him for investment.*

The second exception has been already considered.

DEFT.'s FOURTH EXCEPTION. (Record, p. 85)

The report of the master, (Record, p. 67,) seems to us to place this subject on solid grounds.

DEFT.'s FIFTH EXCEPTION. (Record, p. 85.)

The testator having kept no accounts of his trust, and his representatives offering no evidence tending to prove any actual payment of taxes on the moneys in question, it is now insisted that the Court should presume that taxes were paid, and find without proof how much was paid.

The two remaining exceptions do not seem to us to require any special statement of answers.

S. BARTLETT,
B. R. CURTIS.

Supreme Court of the United States.

DECEMBER TERM, 1869.

IN EQUITY.

ELIZA WALKER

vs.

JOSEPH S. BEAL ET AL. EXECUTORS OF WM. J. WALKER.

BRIEF FOR RESPONDENTS.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1870.

Supreme Court of the United States.

IN EQUITY. DEC. TERM, 1869.

ELIZA WALKER

vs.

JOSEPH S. BEAL ET AL. EXECUTORS OF WM. J. WALKER.

BRIEF FOR RESPONDENTS.

I. There is, defendants submit, no real equity to support the plaintiff's claim.

The indenture of trust was made, as plaintiff expressly alleges, to provide for the support and maintenance of the plaintiff, and the income was to be "devoted to *that purpose.*"

See Bill, p. 1 and 2 of Record.

Mrs. Walker accepted the provision for her support and maintenance.

Indenture, p. 12.

Her claim now is for the income of the fund during the period of reconciliation, when the plaintiff was living with and wholly supported by her husband; when she got precisely that which it was the object of the indenture to secure.

The plaintiff says she ought to have both support *and* income.

II. The claim is made at a time, and under circumstances, which cannot fail to excite the deepest suspicion and distrust.

A. — It is first made twenty years after the oral promises are alleged to have been made.

B. — It is made, for the first time, after the death of Dr. Walker.

C. — For five years the plaintiff lived apart from Dr. Walker, receiving "the income of the trust fund as her only means of support" (Bill, p. 4); yet, at any time during these five years, she might, if her allegations are true, have recovered the full amount of these payments as well as to-day; and this, whether invested or not. And she had the same means of proof as now, if we may rely upon the statement of her daughter, that she, the daughter, was present when the promise was made.

D. — Not till after the death of her husband, — not till after her interest is secured under the will, — not till after the compromise between the heirs-at-laws and the residuary legatees, to which she was a party, — is this claim set up.

III. The *making* of the promise upon which the bill rests is not so clearly established that a Court of Equity will enforce it.

A. — The evidence is oral, consisting of alleged conversations with deceased, twenty and fifteen years ago; and an alleged recognition of the promise more than ten years ago.

B. — The entire testimony is from two witnesses hostile to the deceased.

C. — The testimony as to the agreement is vague and conflicting; that of Mr. Crocker tending to show an agreement to invest for Mrs. Walker and the children, that of the daughter to invest for the wife only (p. 84 and pp. 103–104).

D. — The testimony as to their conversations with the deceased is, we submit, in conflict with the prominent and undisputed facts of the case, to wit: —

With the fact that Dr. Walker, an honest and careful man of business, made no separate investment of this fund.

With the fact that Mrs. Walker, so far as appears, never called for any part of the fund, or made any inquiry as to the character of the investments, or whether any had been made.

With the fact that during the five years of the second separation, when Mrs. Walker needed the money for her support and that of the children with her, nobody—wife, daughter, or trustee — thought of resort to this great fund, to which her claim and means of establishing it were as perfect then as to-day, except that Dr. Walker's lips were not sealed in death.

With the provision made in the will for the support of the wife (pp. 16 and 17), which it is plain would not have been made if the testator had had any idea of this claim against his estate.

With the memorandum of March 27, 1847 (Exhibit B, p. 7), by which the only reservation made by plaintiff of the income is the right to use so much as she might need for private expenses, and any charitable objects she might wish to favor.

E. — No way is open to meet and control alleged admissions and statements of the dead but by showing, as here, their intrinsic improbability when compared with the conduct and acts of both parties. Such is the touchstone the most eminent judges have used. See judgment of Sir Wm. Scott, on Evans *vs.* Evans, 1 Hagg C. R. 35.

IV. The agreement contained in the indenture of separation must stand, if at all, as *a voluntary agreement* of husband and wife, to live separately and apart from each other during their coverture. It is expressly so declared in the written contract (pp. 12, 13).

A. — If it were open to plaintiff to show that the separation

and agreement had their origin, as the bill avers, in the cruelty of the deceased, and were, in fact, involuntary on the part of the wife, the evidence, we submit, falls far short of doing it.

B. — The evidence of the alleged cruelty is wholly unsatisfactory. It comes wholly from one witness, bitterly hostile to the deceased, though his daughter.

Mr. Crocker, though then the confidential friend of the doctor, has no confessions or admissions to state.

C. — No necessary or certain inference can be drawn from the doctor's assenting to the separation. That assent might have been given with a view to his own peace, and to avoid controversy and strife.

D. — The return of the wife to the husband, and within about sixty days after the separation, and her subsequent living with him fourteen years, tend to show that the state of terror and cruelty, which the daughter rather insinuates than states, did not exist.

E. — The account given by the daughter of the separation does not commend itself to confidence (p. 101).

Nor her conversation with her father in his sickness, in the spring of 1855 (p. 103).

To suppose that Dr. Walker was sufficiently softened to regret his neglect, and yet hardy enough to explain it by an utter falsehood, to wit, that it was difficult to find a safe investment, when he was yearly investing from fifty to an hundred thousand dollars, draws too largely upon our credulity.

Her failure to communicate this conversation to her mother, or her and her mother's friend and adviser, Mr. Crocker, during the five years of the second separation, is very significant (p. 106).

The statements given by this witness as to the cruelty of the deceased to his wife are not confined to facts within her own knowledge, and are largely colored by her opinion and feelings (p. 102).

The statement of the constant dread and fear of Dr. Walker by his wife, and the account of the interviews between them as to the checks, are conflicting and inconsistent. Her fearlessness and firmness are the striking characteristics of these interviews, as given by the witness.

F. — The greatest caution and the most rigid scrutiny should be had of testimony given so many years after the event, from a witness so strongly biassed, and when the party capable of explaining the transactions is dead. Admissions from dead men's lips are not to be trustingly listened to.

G.—We submit that, upon the evidence, a decree of divorce would not have been obtained. The reconciliation would have been conclusive upon that point; and that therefore the articles of separation must rest wholly upon mutual consent and agreement.

In substance and effect, the agreement was for a future separation, and is within the principles setttled in Titley *vs.* Durant, 7 Price, 577. Hindley *vs:* Westmeath, 6 B & C., 200.

See, also, 3d Brown's Chan. cases, 505 and notes.

V. The plaintiff and her husband resided in Massachusetts when the agreement for separation was made, the indenture executed, and the moneys delivered for which plaintiff seeks to recover. The validity of the contract, and the effect of the payments, must therefore be determined by the law of Massachusetts.

VI. This indenture of separation would not, we submit, have been upheld and enforced by the courts of Massachusetts.

A. — The question affecting the marriage relation, and its rights and duties, is peculiarly one of State policy, of the *lex loci.*

Story on Conflict of Laws, § 276, 280.
Decouche *vs.* Savetier, 3 Johns' Chan. R. 190.
Blanchard *vs.* Russell, 13 Mass. 1.
Anstruther *vs.* Adair, 2 Mylne & Keene, 513.

B. — And so far as the validity of the contract upon which plaintiff relies is concerned, no other rule can obtain than the law of the place where the contract is made and to be performed.

C. — There can be, defendants submit, no reasonable doubt that the Courts of Massachusetts would declare the agreement relied upon invalid.

See, among other cases,

Ames *vs.* Chew, 5 Met. 320, p. 323.
Albee *vs.* Wyman, 10 Gray, 222.

VII. The policy which tolerates these voluntary separations is an extremely vicious one; for though the relation of marriage is entered into by contract, its rights, duties and obligations are fixed by law, and exist altogether independent of the will of the parties. These voluntary separations are evasions of the law, only to be tolerated when the rigor of the law of divorce was intolerable.

A. — The reasons which have operated to sanction them in England do not exist here, the law itself affording all reasonable facilities for separation.

Ames *vs.* Chew, 5 Met. 320.
Albee *vs.* Wyman, 10 Gray, 222.

B. — The recognition of their validity has been deeply regretted, whenever and wherever made.

Lord St. John *vs.* Lady St. John, 11 Vesey, 526, 536–7.
2 Story Eq. Juris. §§ 1427, 1428.
Titley *vs.* Durant, 7 Price, 577.
3 Brown's Chan. Cases, 614.
Jones *vs.* Waite, 5 Bing. New Cases, 341.
Opinions of Lords Abinger and Denman.

C. — Under the contract in the indenture, as construed by the

plaintiff, the husband had no motive for conciliation and the return of the wife. His interest was to prevent such return; for the obvious reason, that he would have to support the wife in his own home, and at the same time furnish another support and maintenance under the trust-deed. If the contract could have been valid under other circumstances, this feature would and should induce a Court of Equity to decline the enforcing it.

IX. If the agreement was not void, it was annulled or *suspended* during the period of the reconciliation and the cohabitation of the parties thereto; because the agreement was based on separation, and, by the reconciliation, new obligations arose inconsistent with separation.

Titley *vs.* Durant, 7 Price, 577.
2 Story Eq. Juris. § 1428.
St. John *vs.* St. John, 11 Vesey, 521.
Shelford on Marriage and Divorce, 629.
Hunter *vs.* Bryant, 2 Wheat. 32.
Westmeath *vs.* Salisbury, 5 Bligh, N. R. 339.
Clancy on Husband and Wife, 414.
Fletcher *vs.* Fletcher, 2 Cox, ch. 99.
Bateman *vs.* Ross, 1 Dow, P. C. 245.
Jee *vs.* Thurlow, 2 B. & C. 550.
Westmeath *vs.* Westmeath, 1 Dow. & Cl. 519.
Bright's Husband and Wife, 349.
Hindley *vs.* Westmeath, 6 B. & C. 200.
Wells *vs.* Stout, 9 Cal. 479.
Heyer *vs.* Burger, Hoff. ch. 1.
Shelthar *vs.* Gregory, 2 Wend. 422.
Slatter *vs.* Slatter, 1 Yo. & Coll. Exch. 28, 35.
Carson *vs.* Murray, 3 Page, ch. 483.
Chapman *vs.* Gray, 8 Georgia Rep. 341.

Says Judge Story, "Even in case of a deed, if the parties come

together again, there is an end to it, with respect to any future, as well to the past separation."

2 Story Eq. Juris. § 1428, and cases cited.

X. The provision of the indenture of separation, that subsequent cohabitation should not render the agreement invalid, does not control the disposition of the income, while the plaintiff received her support and maintenance under her husband's roof and out of his money. The actual maintenance by the husband, the parties living together, was a satisfaction in equity of the agreement that the income of the trust fund should be devoted to that purpose.

XI. And so the parties regarded the matter, with the exceptions stated in Exhibit B.

This paper is not only in conflict with the plaintiff's theory of the trust, but is itself a substantial agreement as to the disposition of the income while the parties lived together.

XII. A Court of Equity will not require the husband to account for the income of the separate estate of his wife, which the husband, with the consent of his wife, has been accustomed to receive.

2 Story Eq. Juris. § 1396.
Hunter *vs.* Bryant, 2 Wheaton, 32.
Squire *vs.* Dean, 4 Brown C. C. 235.

XIII. The income of the trust fund, when paid to the complainant by the trustees, became wholly discharged of the trust. The trustees had fully performed their duty in relation to it; and the money thus paid to her as income, when paid by her to her hus-

band, became, by the laws of Massachusetts then in force, the property of her husband.

Allen *vs.* Wilkins, 3 Allen, 321.
Lord *vs.* Parker, 3 Allen, 129.
Edwards *vs.* Stephens, 3 Allen, 315.
Ingham *vs.* White, 4 Allen, 412.

XIV. No action could have been maintained by the complainant against her husband in his lifetime, at law or in equity, by the laws of Massachusetts, upon the promise alleged in the bill; nor can such action be maintained against his estate since his decease, for the simple reason that husband and wife were incapable of so contracting. The distinction between the alleged oral agreement to invest the income, upon which the bill rests, and the indenture of trust itself, is obvious. In the latter, the agreement is with and through a third person. The oral agreement is between husband and wife living together, and without any intervention of trustee.

Turner *vs.* Nye, 7 Allen, 176.

At least such action could not have been maintained until the Statute of 1855, ch. 304, passed May 5, 1855, which was subsequent to the promises and to most of the payments alleged in the complainant's bill.

Farrelly *vs.* Ladd, 10 Allen, 127.
Ayres *vs.* Ayres, 11 Gray, 130.
Ayre *vs.* Warren, 47 Maine, 217.

Even the alleged recognition of the agreement was prior to the act of 1855.

XV. The case of Woodworth *vs.* Woodworth (8 Law Times R. 749), cited and relied upon by the complainant, is in conflict

with the law of Massachusetts; where it has been held, that no action could be maintained either at law or in equity, against the estate of the husband in such case, even when a *promissory note* was given by the husband to the wife for the money loaned.

Jackson *vs.* Parks, 10 Cushing, 550.
Turner *vs.* Nye, 7 Allen, 176.

No such a rule of law ever obtained in this country.

XVI. If the complainant ever had any claim, she is precluded by the indenture of compromise made by her and her children with the executors and residuary legatees of the will, from setting it up.

Ingham *vs.* White, 4 Allen, 412.

XVII. Under the General Statutes of Massachusetts, c. 97, sec. 16, the executors were not liable to this suit.

EXCEPTIONS TO MASTER'S REPORT.

BRIEF FOR DEFENDANTS.

I. Under the memorandum of March 27, 1847, the estate of Dr. Walker is to be credited with the twenty-four hundred dollars given by Mrs. Walker, to her sons John Brooks and Joseph Hurd. The $2,400 was paid by Mr. Walker at the request and on the account of Mrs. Walker. $1,500 was refunded; the remaining $900 was absolutely due.

II. The six thousand dollars to be given to the five other children ($1,200 each) under the same memorandum, if not absolutely disposed of, that is, if not taken out of the general trust, and held thenceforth in trust for the five children, was liable to be called for and used at any moment. This state of facts not only excused, but was inconsistent with any permanent investment of that sum, and the executors ought not to be charged with interest thereon. *A fortiori*, they ought not to be charged with interest, with rests.

III. As to the remaining sums charged to have been delivered by Mrs. Walker to her husband, we submit that the character and purposes of the trust were such as would excuse the trustee from making permanent investments thereof. The trust was not one for accumulation.

A. The trust, as stated in the bill, was to invest the sums and the income for her use, to be disposed of by her among her

children, *or otherwise*, as she should direct. Record, page 3. Not to be disposed at her death, or at or after any fixed time; but at such times and in such amounts as she pleased. The trustee not only had the right, but was bound to regard these conditions and limitations of the trust, and to keep himself in a situation to meet them.

B. — The indenture of settlement declares that the provisions therein were made with the intent that the plaintiff might support herself in a suitable manner. Page 11.

Upon the plaintiff's allegations and proofs, there never was a day after the execution of the indenture of settlement when the moneys which go to make up this trust might not have been called for, and spent, used, given away, or otherwise disposed of at the plaintiff's pleasure.

For though the plaintiff returned to her husband's house, the plaintiff, who ought to know the facts, has alleged and offered evidence to prove that it was only to hold the position of *visitor* or *guest* in his family.

See Bill, page 3 of record, and the evidence, p. 92.

Thus her new relation with the testator might at any moment come to an end, and neither dispensed with the need of or limited her right to call for and use the funds as she chose.

C. — As if to put the matter beyond controversy, the memorandum of March 27, 1847 (upon which plaintiff relies as a written declaration of trust), while providing for the gifts to the children, carefully guards and expressly reserves the right to use as much of the income as she should need for private expenses and charitable objects. This memorandum looks to a present use of funds or at the call of the plaintiff.

There is no limitation in this agreement as to the time when or the sums to be called for, except the income itself.

D. — So these moneys (income of the original trust property)

were liable to be called for and used at any time by the trustees under the marriage settlement for the payment of any debts the plaintiff should contract.

See Indenture, p. 11 and 12 of Record.

E. Again, it is to be observed that the moneys which were to make up the trust fund were themselves *income* provided for the support from day to day of the *cestui que trust.* It was not, therefore, interest only of the new trust, but principal, that might at any time be called for and used.

F. The transfers to the trustee were in small sums and frequently made, thus increasing the difficulty of finding safe and productive investments. This is matter of common observation.

G. At the time this trust began, and for some years later, the right of trustees to invest in manufacturing and railroad stocks, was not clearly settled and understood.

H. The new trust itself was liable to termination at any moment that the plaintiff left the house of the testator. Such limitation was clearly within the intent and agreement of the parties, if the plaintiff's evidence is reliable.

Crocker's testimony, p. 92, ans. to int. 9.
Emily H. Walker, p. 102, int. 10; int. 13, p. 103; cross-int. 20, p. 107.

I. What a trustee might have done or ought to have done is to be determined by the circumstances and conditions existing at the time the funds were put into his hands. That they were not called for in fact, or the trust not in fact terminated for many years, is immaterial so long as the *liability* that one or both events would occur existed.

J. The defendant's testator did not in fact invest these funds in his own name as trustee or that of his wife.

Master's Report, p. 66.

K. He did not obtain the money with any intent to apply it to his own use without accounting for it.

Ibid, p. 67.

L. His fault, if he was in fault, was that of negligence only; and this is qualified and greatly relieved by the difficulty of finding investments for funds whose permanency or duration could not be relied upon. The statement of the testator as to the difficulty of finding safe investment as applied to funds to be held and used, as above stated, is entitled to consideration and weight; the situation of the testator at the time gives to the statement additional force.

M. The testator was not engaged in active business. He was a man of large wealth. There was no fear of loss from his inability to refund. Neither the wife nor her trustees would have asked for a safer investment than his note of hand.

N. The only legal grounds of complaint against the testator are the mingling of the trust funds with his own. and neglect to make investments.

O. Now it is for a trust with such peculiar features and limitations that an equitable rule as to interest is to be found. The books furnish no precedent or precise rule applicable to it. The question addresses itself to the sound discretion of the Court. And we submit that there is no equitable ground for charging the trustee with anything beyond simple legal interest.

See rule as stated by Chan. Kent, 2 Com. (10th Ed.) 261.

P. If he failed to invest, and mingled the funds with his own,

the true rule is stated by Mr. Justice Morton, in Boynton *vs.* Dyer. 18 Pick. 1. "If the trustee neglect to invest at all, he will be chargeable with the income he would have derived from a proper investment." Ib. p. 6.

Q. If the true equitable rule is indemnity, to put the *cestui que trust* in as good condition as she would have been had investments been made as directed or agreed upon, simple interest would afford such indemnity. Safe trust investments during the period of this trust would have netted little, if anything, more than simple interest.

R. If interest is to be charged with annual rests, it should be only such rate of interest as could have been realized after payment of the expenses and charges of the trust; and that would be something less than five per cent.

See evidence of Blake, Bangs & Hale, pp. 64 and 65.

S. Whatever is charged against the testator's estate more than he would have fairly realized if he had safely and judiciously executed the trust is punitive only.

T. If a Court of Equity can ever give more than indemnity and compensation, if the idea of punitive damages, obsolete everywhere else, retains any foothold here, we say there is no call for its use in this case, for, —

IV. It is only when a strong case of corrupt and improper conduct is established against the trustee that he would be charged with yearly or half-yearly rests in the nature of compound interest.

Barney *vs.* Saunders, 16 How. 535.
Urline's Office of Trustees, pp. 95, 96, 97, 98.
Hill on Trustees, pp. 374, 523, and cases cited.
Roche *vs.* Hart, 11 Vesey, 58.
Lewin on Trustees, p. 277.
Penny *vs.* Avison, 3 Jurist. N. S. 62.

Jones *vs.* Foxhall, 15 Beav., 392.
Saltmarsh *vs.* Barrett, 31 Beavan, 349.
Atty-Gen. *vs.* Alford, 4 De Gex, MacNaughton and Gordon 851–2.
Fletcher *vs.* Green, 33 Beav., 426.
Rapalje *vs.* Hall, 1 Sanf., Chan. 399.
Robinson *vs.* Same, 21 Law, J. Ch. 111. (N. S.)

No such case is shown by this record. Negligence (not malfeasance) is all that is proved, and indemnity, making the party whole, is the only recognized rule.

The reasons assigned by the Master (p. 67) for allowing rests are, defendants submit, unsatisfactory, to wit: —

1. "That the testator received the funds at his own request." Yet not for his own advantage, but under circumstances where he might fairly have their appropriation to her support and his relief.

2. "He might have invested the income in stocks of known market value in which he invested his own funds." It does not appear that these were suitable *trust* investments, but otherwise.

3. "He invested the money in the bank in his own name, and might have increased his credit." There is nothing to indicate that his credit was increased; and, were the fact established, it would be ground only for simple interest.

4. "He might have deprived the plaintiff of the means of tracing her own money." *Might again.* Crocker, it was known, had accounts of all moneys paid.

5. "He intentionally and persistently neglected to invest." There is no proof of intentional, persistent neglect, but of procrastination and negligence only.

VI. There seems to be no sound reason why, if testator's estate is charged with interest with or without rests, resulting in income

and profits as large as could have been realized from any actual and safe investment, the trustee should not be allowed the usual compensation. The reasons for allowing compensation would not be so strong if simple interest only was allowed.

VII. The facts are sufficient to show an acquiescence in the retention of the money in the testator's hands. It was known ten years before the testator's death that no investment had been made. Nineteen years elapsed before there was any attempt to enforce the trust.

Record, p. 103.

This acquiescence (for five years even after the separation) has one of two solutions, either that no trust was understood to have been created, or that it was enough to know the testator had the money, and that it could not be in better hands.

PLAINTIFF'S EXCEPTIONS.

I. Dealing with these exceptions as with those of the defendants, not numerically, but with reference to the subjects-matter embraced in them, defendants submit, that the ruling and finding of the master, as to the evidence of certain investments in stocks made by the testator during the existence of the trust, are entirely sound.

A. It is to be observed that the evidence was not offered as part of a chain of proof to be followed by other evidence, tracing the moneys of the plaintiff into the investments of the testator, and directly connecting the one with the other. Had that been the offer, there might be some difficulty in holding that the evidence was not competent, however insufficient.

B. The evidence was offered with the view and request that the master should by presumption of law make the connection which the facts utterly failed to make; that is to say, the master was, as a rule in equity, to find and hold that money of the plaintiff

having come into the hands of the testator, and the testator having thereafter within a reasonable time purchased stock equal in amount or exceeding the money of plaintiff, it was the plaintiff's money that bought the stock or part of it. The answer at law or in logic is "*non sequitur*." The evidence offered as the basis of such a presumption was not competent.

See Record, pp. 63 and 64.

C. If the testator had been shown to have had no moneys of his own or of third persons to invest, the presumption might be a reasonable one, but the question would still clearly be one of fact and not of law.

The evidence offered, itself showing that the testator was investing, at the times stated, large sums of his own, the tendency of the evidence to establish the connection was extremely slight.

D. The reasons given by the master for holding the evidence incompetent and insufficient are, we submit, satisfactory and conclusive. P. 64.

E. The plaintiff had the benefit of this evidence for all uses for which it was possibly competent. It is by no means clear that it is competent for the first and second purposes stated by the master, because it does not appear that the stocks purchased were those in which a trustee could safely or lawfully invest.

II. The second, third and fourth exceptions of the plaintiff involve questions as the computation of interest.

First, as to time from which after the receipt of the moneys interest should be allowed, or what reasonable time should be afforded to make the investments. The master has allowed forty-five days. If the defendants do not complain, the plaintiff should not.

Second, as to the making of rests, the plaintiff claiming that they should be made semi-annually. The position of the defendants on this point is stated in the argument of their own exceptions. They claim there is no sufficient ground for charging the testator's estate with anything more than simple interest.

Thirdly, as to the time up to which rests should be made in computing interest, if made at all. The master allows compound interest to the time of the separation, the plaintiff claims it to the time of the filing of her bill.

III. There can be, we submit, no reasonable doubt that whatever trust was created concerned moneys to be received by the plaintiff while the parties lived together, and was limited to that time.

See statement of agreement in the bill, p. 3 of Record.

A. The reason assigned and assented to for the arrangement was, that plaintiff would have no use for the money while she was with the testator.

See testimony of Eliza H. Walker, p. 102, int. 111; p. 106, cross-int. 15.

B. This limitation, indeed, arose from the very nature of the trust, which concerned income set apart for the support of the wife, separately from her husband, which was put into the hands of trustees because the parties would not live with or deal with each other.

C. If she did not call for an account or he render one, it seems to us her outside claim is interest in the nature of damages for the detention of the money.

D. Her failure to call for an account may be fairly regarded as an acquiescence in the state of things then existing, for she was certainly put upon her inquiry concerning it.

E. The probable reason for charging interest with rests during the time the parties lived together was the peculiar confidence and trust growing out of and attending the relation of the parties and the assumed abuse of the confidence reposed in the testator.

F. When this relation was terminated by the second separation, the peculiar confidence no longer existed. Mrs. Walker became *sui juris* as to the property under the articles of separation and its

fruits, was competent to assert, and should have asserted, her rights, and have withdrawn, or made an effort to withdraw her money.

G. Instead of this, she permitted her husband to retain the money. This acquiescence on her part in the retention of the money was calculated to mislead, and may have misled him.

H. When the reason which induces a charge of interest with rests ceases, the charge ceases. Rests are *strictissimi juris,* and not to be extended.

I. The plaintiff first claimed rests to the filing of her bill since that to the death of the testator; but the reason, which would exist in ordinary cases for pausing at the death of the trustee, existed in this case when as to this property the relation of confidence ceased.

IV. Upon the matters involved in the first and sixth exceptions, the views of the defendants have already been presented.

The fifth presents no separate subject-matter, but concerns and is incidental to the question of interest.

In conclusion, we respectfully submit, that the extent of plaintiff's case on the proofs is for a receipt of funds with a promise to invest.

2. Continued negligence to invest.

3. That her outside claim is compensation for what she lost by her negligence.

4. That this is measured by a what a prudent trustee, investing with a view to safety, as well as reasonable income, would have fairly netted upon the trust fund.

5. That this rule extends only to the termination of the trust when the plaintiff ceased to live with him, and fell back upon her distinct rights; that after this the claim of plaintiff can only be damages for the detention of the money.

6. That the report ought to be recommitted, that the amount may be made up on these principles.

BENJ. F. THOMAS.
H. C. HUTCHINS.